132-260

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. ~~352~~ 83

HENRY C. DAHL, PLAINTIFF IN ERROR,

vs.

SALY RAUNHEIM.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF MONTANA.

FILED SEPTEMBER 21, 1886.

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1 SALY RAUNHEIM, Plaintiff, *vs.* HENRY H. DAHL, Defendant.

The people of the Territory of Montana send greeting to Henry C. Dahl, def't:

You are hereby required to appear in an action brought against you by the above-named plaintiff in the district court of the second judicial district of the Territory of Montana in and for the county of Silver Bow, and to answer the complaint filed therein within 10 days (exclusive of the day of service) after the service on you of this summons, if served within this county, or, if served out of this county but in this district, within 20 days, otherwise within 40 days, or judgment by default will be taken against you according to the prayer of said complaint. The said action is brought to obtain a decree of this court adjudging plaintiff to be the rightful owner and entitled to the possession of the following-described premises, being in controversy between the placer mining claim of plaintiff and the Betsy Dahl lode claim of defendant, to wit:

2 Beginning at corner No. 1 of the Betsy Dahl lode, as surveyed and application for patent made therefor, from which corner the ¼ sec. cor. on the S. boundary of sec. 8, T. 3 N., R. 7 W., bears S. 26° 15′ E., 686 feet distant from said cor. No. 1, running thence N. 9° 45′ W. 555 feet to the N. E. cor. of the Betsy Dahl claim; thence S. 89° 45′ W. 263 ft.; thence S. 548 ft.; thence N. 89° 45′ E. 357 ft. to place of beginning, containing 3.91 acres of land, more or less; also to obtain a decree of said court adjudging that the defendant is not entitled to said premises or the possession thereof or any part, and for such other and further relief as said plaintiff may be entitled to, and for costs of suit; and you are hereby notified that if you fail to appear and answer said complaint as above required the said plaintiff will take a default against you and apply to the court for the relief prayed for and for costs of suit.

Given under my hand and the seal of the district court of the second district of the Territory of Montana in and for the county of Silver Bow this 17th day of June, A. D. 1882.

GEORGE W. IRVIN, *Clerk*,

3 By H. C. BODLEY, *Deputy Clerk*.

I hereby certify that I received the within summons on the 17th day of June, A. D. 1882, & served the same by delivering a true copy of the within summons to Henry C. Dahl, in Butte City, in the county of Silver Bow, M. T., he being the defendant named in said summons.

Dated this 19th day of June, 1882.

THOMAS W. LOWRY, *Sheriff*,
By C. A. SMALL, *Deputy Sheriff*.

Filed June 19, A. D. 1882.

GEO. W. IRVIN, *Clerk*.

Second Judicial District Court of Silver Bow, Montana Territory.

SALY RAUNHEIM, Pl'ff,
vs.
HENRY C. DAHL, Def't.
} Statement on Motion for New Trial.

The above cause is one to quiet title. The cause being regularly called on March 27th, 1884, one of the days of the March term, 1884, of the above court, the pleadings were read to a jury which was regularly called and sworn to try said case. Said pleadings are as follows:

4 Second District Court of Montana Territory, Silver Bow County.

SALY RAUNHEIM, Pl'ff, *vs.* HENRY C. DAHL, Def't.

Said plaintiff, by leave of court first had and obtained, makes this his amended complaint herein, and alleges that plaintiff is the owner (except as to the United States), is in possession, and entitled to the possession of the following described mining premises, situated in Silver Bow county, Montana Territory, to wit, the owner of forty acres of placer mining grounds described by the survey of public lands as the east half of the east half of the southwest quarter of section 8, in township 3 north, range 7 west of the principal base and meridian of Montana Territory; that said premises were duly claimed and located by Erastus A. Nichols, S. E. Nichols, and George F. Marsh, Feb'y 22, A. D. 1880; that said locators afterwards sold and conveyed said premises to plaintiff; that plaintiff and his said
5 grantors have in all respects complied with all laws of the United States, of Montana Territory, and all local rules and regulations of miners relating to said mining claim, and by virtue thereof are entitled to the exclusive right of possession and enjoyment of the same.

That plaintiff, being so the owner of said mining premises, on or about the 16th of July, A. D. 1881, applied for a United States patent for said premises; that no adverse claim was filed during the sixty days of publication of plaintiff's said application; that by the failure of defendant to adverse the claim of plaintiff within said time he is estopped and debarred from setting up any claim of ownership or right of possession in or to said premises or any part; that the defendant claims some right or interest in a portion of said premises adverse to plaintiff, and has applied for a United States patent therefor, claiming the following-described portion thereof as the Betsy Dahl lode: Beginning at corner No. 1 of said Betsy Dahl lode as surveyed for patent, from which the quarter-section corner
6 and the south boundary of section 8, township 3 north, range 7 west, bears south 26° 15′ east, six hundred eighty-six feet distant, and running from corner No. 1 north 9° 45′ west five hundred and fifty-five feet to the northeast corner of the Betsy Dahl claim; thence south 89° 45′ W. two hundred sixty-three feet; thence south five hundred forty-eight feet; thence north 89° 45′ east three

hundred fifty-seven feet to place of beginning, containing three and — one-hundredth acres of land, more or less; that within the time allowed by law plaintiff filed his adverse claim in the land office to said application for patent for the premises last above described, and brings this action to determine the right to the possession of said premises. Plaintiff states that no known vein or lode was known to exist within the boundaries of said placer mining claim at the time he made application therefor, nor is any vein or lode now known to exist within said boundaries as claimed by defendant; that if any vein or lode was known to exist the locator or claimant thereof was only entitled to twenty-five feet on each side the
7 middle of said vein or lode at the surface; that the application of defendant for patent to the premises claimed by him serves to cloud plaintiff's right and title thereto and the possession and enjoyment thereof. Whereupon plaintiff prays judgment and a decree of the court—

First. That he be adjudged the rightful owner and entitled to the possession of the premises described and in controversy and of every part thereof.

Second. That defendant be adjudged not to be the owner of said premises or any part or entitled to the possession thereof or any part.

Third. Plaintiff prays for such other and further relief as he may be entitled to, the premises considered, and as justice and equity require.

Fourth. Plaintiff prays for judgment for costs of suit.

S. DE WOLFE,
Att'y for Pl'ff.

TERRITORY OF MONTANA, } ss:
County of Silver Bow, }

Saly Raunheim, being duly sworn, on his oath says: I am the plaintiff in the above cause. I have read said complaint,
8 and the facts stated therein are true of my own knowledge except as to the matters therein stated on information and belief, and as to those matters I believe it to be true.

SALY RAUNHEIM.

Subscribed and sworn to before me this 26 day of March, A. D. 1884.

R. L. DAVIS, *Clerk,*
By CHARLES S. WARREN,
Deputy Clerk.

Second Judicial District Court, County of Silver Bow, Montana.

SALY RAUNHEIM }
vs.
HENRY C. DAHL. }

The defendant in the above-entitled cause answers the amended complaint of plaintiff and denies that plaintiff is the owner of (ex-

cept as to the United States or otherwise) or is in the possession of or entitled to the possession of the premises described in said amended complaint or any part thereof, as situate in Silver Bow county, Montana Territory, and — by public surveys as the E. ½ of the E. ½
9 of the S. W. ¼ of sec. 8, T. 3 W., R. 7 W., of the principal base and meridian of Montana Territory, or that said premises or any part thereof were, on February 22, 1880, or at any time, duly or otherwise claimed or located by Erastus A. Nichols, S. E. Nichols, or George F. Marsh or either of them, or any person or persons other than this defendant, or that said premises are placer mining ground, or that said pretended location- or either or any of them ever conveyed said premises to pl'ff, or that pl'ff or his said pretended grantors or any of them have in all or any respects complied with all or any of the laws of the United States or of Montana Territory or all or any of the local rules or regulations of miners relating to the said mining claim, or by virtue thereof are entitled to the exclusive or any right of possession or enjoyment of said premises or any part thereof.

As to the allegations in said amended complaint as to plaintiff's pretended application for a United States patent, defendant avers that he has no knowledge, information, or belief sufficient to enable him to answer said allegations, and he therefore denies that
10 on or about the 16th day of July, 1881, or at any other time plaintiff applied for a United States patent for said premises or any part thereof.

Defendant denies that by any failure of defendant to file any adverse claim to any alleged application for patent by plaintiff he is now estopped or debarred from asserting or maintaining any right or interest to the premises embraced in the said placer mining claim or any claim or ownership or right of possession in or to the same or any part thereof.

Defendant admits that he claims a right and interest in and to a portion of plaintiff's said pretended placer mining claim adverse to plaintiff, and has applied to the United States for a patent for the Betsy Dahl quartz lode mining claim, which said claim includes portions of plaintiff's said pretended claim as follows, to wit: Beginning at cor. No. 1 of said Betsy Dahl claim, from which the quarter-section corner on the south boundary of sec. 8, T. 3 N., R. 7 W., bears S. 26° 15′ E., 686 feet distant, running thence N. 9° 45′
11 W. 555 feet to the N. E. corner of said Betsy Dahl claim; thence S. 89° 45′ W. 263 feet; thence S. 548 feet; thence N. 89° 45′ W. 357 feet to the place of beginning.

Defendant denies plaintiff's allegation that no known lode or vein was known to exist within the boundaries of said pretended placer mining claim at the time he alleges he made application therefor, or that no vein or lode is now known to exist within said boundaries, or that defendant is restricted to 25 feet on each side of the center of said vein if known to exist.

For a further and separate defense and an affirmative cause of action against plaintiff, def't alleges that at the date of plaintiff's alleged application for patent, and long prior thereto, there was

known to exist, and ever since has been and now is known to exist, within the limits of said pretended placer mining claim, a vein or lode of quartz, which never was in said application for patent or otherwise claimed by plaintiff, and which never was nor now is owned by plaintiff, and that in whatever application for patent for the premises in dispute plaintiff made he did not claim said
12 quartz lode claim; that said lode is now known as and called the Betsy Dahl quartz lode mining claim and is owned by defendant; that defendant at the time of the commencement of this action was, and ever since has been and now is, the owner and in the possession and entitled to the possession of said Betsy Dahl quartz lode mining claim, situate in the S. ½ of the S. W. ¼ of section 8, T. 3 N., R. 7 W., and officially designated as lot No. 120 in said township and range, and described as follows, to wit: Commencing at a granite stone 14 x 12 x 10 inches, set 14 inches in the ground, for corner No. 1, from which the quarter-section corner on the southern boundary of said section 8 bears S. 26° 15′ E., 686 feet (1,039 chains) distant, running thence S. 89° 45′ W. 1,500 feet to a granite stone 18 x 10 x 8 inches, set 14 inches in the ground, for corner No. 2; running thence N. 9° 45′ W. 555 feet to a granite stone 20 x 10 x 8 inches, set 15 inches in the ground, for corner No. 3; running thence N. 89° 45′ E. 1,500 feet to a granite stone 18 x 12 x 10 inches, set 14 inches in the ground, for corner No. 4;
13 running thence S. 9° 45′ E. 555 feet to the place of beginning, and that the surface ground within the above boundaries is necessary and essential to the working and development of said quartz lode claim.

That the pretended placer mining claim of plaintiff overlies and includes a portion of said Betsy Dahl claim by boundaries as described on page 4 of this answer. Wherefore plaintiff prays the decree of this court—

1. That defendant be substantiated in his title to said Betsy Dahl claim, and be decreed to be entitled to the possession of the same and every part thereof free from the let, hindrance, or adverse claim of plaintiff.

2. That plaintiff be decreed to have no estate or interest or title whatever in or to said Betsy Dahl claim and the ground therein described.

3. That plaintiff be forever debarred and enjoined from setting up or asserting any claim whatever in or to said ground or premises or any part thereof.

4. For his costs herein, and for such other and further
14 relief as to the court may seem right and just.

RANDOLPH & DE WITT,
Defendant's Att'ys.

TERRITORY OF MONTANA, } ss:
County of Silver Bow, }

Henry C. Dahl, being duly sworn, says: I am defendant named in the above answer. I have read the same and know the contents thereof. The matters therein stated are true of my own knowledge

except as to those matters therein stated on information and belief; of and as to those matters he believes it to be true.

HENRY C. DAHL.

Subscribed and sworn to before me this 27th day of March, A. D. 1884.

WM. H. DE WITT,
Notary Public, Montana.

Witnesses were then called, sworn, and examined on the part of the plaintiff, the names of which witnesses and their testimony and the whole thereof is as follows, to wit; and the objections by
15 counsel, the exceptions taken to testimony, and the reasons thereof, and the exhibits introduced are as follows, to wit:

In the District Court of the Second Judicial District of Montana Territory in and for the County of Silver Bow.

SALY RAUNHEIM, Plaintiff,
vs.
HENRY C. DAHL, Defendant.

This case came regularly on for trial this 27th day of March, A. D. 1884.

Stephen De Wolfe, counsel for plaintiff; Randolph & De Witt, counsel for defendant.

Pleadings read to the jury.

FRANK MARSH was called and sworn for plaintiff, and testified as follows:

I will ask you if you know where the premises in dispute are situated.

Yes, sir; I do.

They are described in the complaint as the east half of the southwest quarter of section 8, in township 3 north, range 7 west, of
16 the principal base and meridian of Montana Territory. Do you know where that is?

Yes, sir.

State where it is with reference to this town.

Is this a twenty-acre tract?

No. I will ask you if you know where the east half of the southwest quarter of section 8 is.

Yes.

State if you were ever on the premises.

Yes; I have been there a great many times.

State with reference to this town or with reference to the present works of the Montana Copper Co.

I think the Montana Copper Company's works are on the premises, as I understand it.

I will ask you if you at any time located the premises in controversy.

Mr. DE WITT: I object. Ask him what he did.

Mr. DE WOLFE: I think the question is proper, whether he took the steps necessary to locate it.

The COURT: You may ask the question.

Mr. DE WITT: I except to the ruling.

Mr. DE WOLFE: State whether you ever claimed, took up, or located the premises. State what you did.

17 I located a twenty-acre tract.

This is not a twenty-acre tract.

I understand after that I was a party to the location of another tract, embracing the whole description you have read.

What did you do in making the location?

Before the location was made I was on the premises several times. I made out a notice of location and posted it on the ground and filed a copy with the county recorder.

Mr. DE WITT: I object to that. There is no requirement of any such notice and posting.

The COURT: This may be followed up.

Mr. DE WOLFE: State what you did towards locating the premises.

Nothing more than posting a notice on the claim.

DE WITT: I object to that. The local laws must be shown before anything of that kind can be shown.

The COURT: We will let this remain now, but it will be stricken out unless followed up by evidence of the local rules and regulations.

Argument by counsel.

18 The COURT: We will let this testimony remain as it is, and we will see before you go to the jury whether it is competent or not.

Mr. DE WITT: It goes in under exceptions.

Mr. DE WOLFE: Do you know*r* the character of the ground?

It is mineral ground.

Did you go over the ground carefully before making the location?

I was over the ground before; several times before. I have been over every legal subdivision of it.

Did you ever examine the surface as to whether there were croppings indicating the existence of a lead or lode there?

Mr. DE WITT: I object to that as not proper examination-in-chief. We allege that there was a ledge there.

Mr. DE WOLFE: We allege there was not.

The COURT: Objection overruled.

Mr. DE WOLFE: State, at the time of location, whether there were any indications—surface indications—of a ledge there.

None whatever that I saw, sir.

How recently have you been on the ground?

19 I don't remember. I was there about a month or six weeks ago.

Was the ground covered with snow?

Yes; it was the last time I was out.

When were you there last when the ground was bare, if you remember?

I was there last fall. Last summer I rode over in — buggy.

Have you at any time since the location of the ground seen croppings or indications of a lead there?

No, sir; I never have.

Did you ever make any disposition of the ground?

Yes; I sold it.

Who did you sell it to?

To the Montana Copper Co. or to Mr. Raunheim.

DE WITT: I object. The deed is the best evidence of that.

DE WOLFE: I now offer in evidence the certified copy of a deed from Erastus A. Nichols, Sarah Nichols, and George F. Marsh of the ground in controversy to Saly Raunheim.

DE WITT: I object to the introduction of the deed, first, because it purports to be a deed or conveyance from Erastus A. Nichols, Sarah Nichols, and George F. Marsh to Saly Raunheim of

20 certain ground, and it has not yet been proved that there was any location made of the ground according to the local rules and regulations of miners or the laws of the United States and statutes of Montana Territory; second, because the deed does not describe the ground asked for in the complaint.

DE WOLFE: I will ask to withdraw Mr. Marsh and call Mr. Ringling.

Mr. B. RINGLING called and sworn for plaintiff, and testified as follows:

Examined by Mr. DE WOLFE:

Mr. Ringling, what is your business?

Surveying, sir.

Do you know where the premises in controversy in this action are situated?

Yes, sir.

Do you know where section 8, township 3 north, range 7 west, is in this county?

I do; yes, sir.

I will ask you to take that diagram and say if it was prepared by you.

Yes, sir.

21 Now, I will ask you to show on the diagram to the jury. I will ask you to show there where the east half of the southwest quarter of section 8, in township 3 north, range 7 west, is—just the east half. I will offer this map in evidence. I will say that the complaint includes more ground than is conveyed by the deed. It includes the same and also more.

See plat, page — of this transcript.

Now, I will ask you to answer the question.

It is this area included within these lines.

It runs around the entire tract?

Yes, sir.

I will ask you to state from that map where the east half of the southwest quarter is?

That is it. It runs from that corner up to here.

In other words, the east half embraces both these tracts of the west half of the east half.

Yes, sir.

The complaint calls for the entire east half, but the deed calls for the east half of the east half. With that explanation I will now offer the deed in evidence.

Mr. DE WITT: That is not the only objection to the deed.
22 The description does not correspond with the allegations in the complaint. The other objection is that the deed is incompetent and immaterial in this action, because it is not yet proved that the premises described in the deed were ever located by anybody here. I think the objection to the evidence of Marsh should be ruled upon now. I make the motion that all of Marsh's testimony be stricken out.

DE WOLFE: On what grounds?

DE WITT: On the ground that no location has been proved.

Argument by counsel.

The COURT: You may ask the witness whether there was any mining district there.

DE WOLFE: Mr. Ringling, you say your business is surveying?

Yes, sir.

Are you also a mineral surveyor?

No, sir; I am not a deputy mineral surveyor.

Do you know whether the premises marked there in red ink are within the limits of any organized mining district?

They are within the limits of what is known as Summit Valley mining district.

23 Do you know where the limits of Summit Valley mining district are?

No, sir; not definitely.

Do you know which side of Silver Bow creek this is on?

I cannot tell from this plat; no, sir. I can't tell where the creek runs in regard to this claim, but I think it is on the east side of the creek.

Do you know the boundaries of Summit Valley mining district?

No, sir; I do not.

Do you know whether there are any rules and regulations in force in Summit Valley mining district in regard to placer mines?

No, sir; I do not.

As to the boundaries, the only boundaries of Summit Valley

mining district that I know are on the west. The line runs through the Big Butte north to south. I will ask you, looking at that map, whether you have ever been on the premises marked in red there.

I don't know whether I have been on the exact ground, but I have been all over this country here.

24 I will ask you whether you ever looked at it carefully with reference as to whether there were any croppings, indications of a ledge on the surface.

No, sir.

Do you know whether there are such?

No, sir.

That's all.

Cross-examined by Mr. De Witt:

You have had considerable experience in surveying claims in this district—I do not mean as deputy?

Yes, sir.

What is your best knowledge as to whether that ground is in Summit mining district or not?

Well, in surveying claims over there I generally returned them to the surveyor general's office as Summit Valley mining district.

The Calusa, for instance?

Yes, sir.

The Hattie Harvey?

The same.

The Betsy Dahl?

I don't know as to that.

The Hattie Harvey is in the same district?

25 It is a little to the west.

Isn't the Hattie Harvey just west of this claim?

Yes; it is to the north and west.

Well, isn't it generally understood that those claims are in Summit Valley mining district?

Mr. De Wolfe: I object to that.

De Witt: According to your best knowledge?

As I say, I don't know where the east limit of the district is—whether it is the Silver Bow creek or the hills beyond. It may be the creek.

Are these surveys all returned as in that district?

Yes, sir.

This plat is certified to by Kellogg?

No, sir; this — simply a copy of a paper made out in the office.

Was the original certified to by him?

This is a combination of two maps.

Whose signature is this G. A. Kellogg? He was sworn by you.

He swore to two different adverse claims; one was brought by Mr. Raunheim and the other by the Montana Copper Company, and this is the combination of the two plats.

The originals were sworn to by him?

26 Yes, sir; but this only represents the combination of the two.

That describes the ground as in Summit Valley mining district?

Yes; it does.

That's all.

Mr. DE WOLFE: Now, I offer in evidence this deed.

Mr. DE WITT: Wouldn't this be a proper place, your honor, to rule on Marsh's testimony?

The COURT: I think we can get along with this now. This objection will be overruled.

Mr. DE WITT: Does your honor overrule my motion in regard to Marsh's testimony?

The COURT: We will consider that hereafter.

Mr. DE WITT: We except to the ruling.

Deed from Erastus A. Nichols, Sarah Nichols, and Geo. F. Marsh to Saly Raunheim offered in evidence, read to the jury, and marked Exhibit A, as follows:

"EXHIBIT A."

This indenture, made the 27th day of June, in the year of our Lord one thousand eight hundred and eighty-one, between
27 Erastus A. Nichols, Sarah E. Nichols, his wife, and George F. Marsh, of Silver Bow county, Montana Territory, of the first part, and Saly Raunheim, of the same county and Territory, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of six hundred dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey, unto the said party of the second part and to his heirs and assigns forever all of the following-described property, situate, lying, and being in Silver Bow county, Montana Territory, and particularly bounded and described as follows, to wit: The east half of the east half of the southwest quarter and the south half of the southeast quarter of the northwest quarter of section 8, T. 3 N., R. 7 W., containing an area of 60 acres, more or less—

Together with all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining or usually had and enjoyed; to have and to hold all and singu-
28 lar the said premises, together with the appurtenances, unto the said party of the second part and to his heirs and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ERASTUS A. NICHOLS. [SEAL.]
SARAH E. NICHOLS. [SEAL.]
GEO. F. MARSH. [SEAL.]

TERRITORY OF MONTANA, } ss:
County of Deer Lodge, }

On this 27th day of June, 1881, before me, the undersigned, a notary public in and for the Territory of Montana, personally appeared Erastus A. Nichols, Sarah E. Nichols, his wife, and George F. Marsh, to me personally known to be the persons described in and who executed the foregoing instrument and who severally acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned; and the said Sarah E. Nichols, wife of the said Erastus A. Nichols, at an examination had by me separate and apart from and without the hearing of her said husband, was by me made acquainted
29 with the contents of said instrument, and acknowledged to me that she executed the same freely and voluntarily and without fear, compulsion, or undue influence on the part of her said husband, and that she does not wish to retract the *the* execution of the same.

In testimony whereof I have hereunto subscribed my hand and affixed my notarial seal on the day and year in this certificate above written.

[NOTARIAL SEAL.] CHARLES S. WARREN,
Notary Public.

Filed for record June 28th, 1881, at 34 minutes past 10 o'clock a. m.

A. C. WITTER,
County Recorder.

TERRITORY OF MONTANA, } ss:
County of Silver Bow, }

I, H. S. Clark, county clerk and *ex officio* recorder of said county, do hereby certify that the annexed instrument is a full, true, and correct copy of the original instrument as recorded at page 559, in Book "A" of Deed Records of Silver Bow county, Montana Territory.

30 Attest my hand and the seal of said Silver Bow county, hereunto affixed this 26th day of March, 1884.

H. S. CLARK,
County Clerk & Recorder,
By WILL. S. CLARK, *Deputy.*

Mr. DE WOLFE: Now, I will recall Mr. Marsh.

GEORGE F. MARSH recalled for plaintiff, and testifies as follows:

Examined by Mr. DE WOLFE:

I will ask you to examine that map and state whether the portion there colored red—on which side of Silver Bow creek is it?

On the east side.

On the east side of the creek?

Yes, sir.

I will ask you if you are familiar with the eastern boundaries of Summit Valley mining district?

I have known it ever since I have been in the camp to be the Silver Bow creek.

Do the premises in controversy here lie within the boundaries of Summit Valley mining district?

DE WITT: I object to that. The best way to know that is by the laws of the district.

31 DE WOLFE: As far as that is concerned, this witness states that he knows where the boundaries are and has known them ever since he has been in the camp. He says that the limits are the Silver Bow creek.

The COURT: Objection overruled. I think this is a matter of record, but this objection is made to the question, and it will be overruled.

Mr. DE WITT: It goes in under our objection.

DE WOLFE: Do you know whether the premises I have pointed out, the portion colored red, is within any organized mining district?

No, sir; I don't know that it is. My impression is that it is outside.

Do you know of any organized mining district lying east of the Silver Bow creek?

No, sir; there is none.

Cross-examined by Mr. DE WITT:

Do you know of the existence of a district known as the Summit Valley mining district?

I know there was such a district.

Do you know there isn't such a district?

There was such a district years ago, but there is no record of the books — can be found.

32 Summit Valley district?

Yes.

Did you ever issue a subpœna for them?

No, sir.

Well, I never had any trouble getting them.

You say 5 or 6 years ago there was such a district?

Yes; and I believe there is such a district as that now. I don't know that the laws are in force.

Were the laws written?

Yes; I believe they were, but I never saw them.

In the early part of your testimony you spoke of this being mineral there. How do you know that?

By the bare fact that all the ground in this part of the territory is mineral ground. This ground has been set aside by the Commissioner of the General Land Office as mineral ground.

You base your statement upon the report of the General Land Office?

Yes; and the return of the land.

Do you make that statement and base your evidence on any personal investigation?

Yes; I was on the ground several times before it was located.

33 You located it as mineral ground because it was returned so?

Yes; and it was open to location.

Because it was called mineral land?

Yes.

How close an investigation did you make to ascertain whether there was a lode there?

I was over the ground a good deal and never saw any croppings to show it.

Map shown witness.

Did you examine this ground?

I don't think I did. That don't include the location.

Did you investigate there?

No, sir; I didn't go there.

Did you go over this yellow?

Yes.

Find any indications of a lead?

No, sir; I run that line there and never found any indications of a lead on any part of the ground.

You have been all over it?

Yes, sir.

In the summer time?

Yes, sir.

Did you prospect any for quartz?

No, sir.

34 That's all.

Mr. DE WITT: I now move to strike out all of Mr. Marsh's testimony.

The COURT: He said that ground is out of the district. The objection will be overruled.

Mr. DE WITT: I except to your honor's ruling.

SALY RAUNHEIM called & sworn for the plaintiff, and testified as follows:

Examined by Mr. DE WOLFE:

You are the plaintiff in this action?

Yes, sir.

I will ask you whether you are acquainted with the premises in controversy?

I am.

The premises described by the red coloring in the diagram?

Yes, sir.

How often have you been on the premises?

Hundreds of times.

Have you ever examined the premises—I mean that portion in

red—with reference to whether there are any indications of croppings on the surface?

Yes, sir.

35 State whether there are any or not?

There is nothing to be seen on the surface from any indications there, either of outcroppings or anything else. I looked very carefully over it to find a lead.

Which side of Silver Bow creek is that on?

On the east side.

Is that ground low or flat, or down on a level with the creek? State the general lay of the land.

Well, it is not exactly on a level with the creek; it is a little higher; it is a kind of a sand bank; it is placer ground.

Have you ever dug any in the ground?

I have.

Well, in any digging or developement that you have made, or others have made by your directions, state to the jury whether you found any indications of a lead there?

No, sir; there are no such indications there.

Did you ever apply for a patent on the premises?

Mr. DE WITT: I object to it; that is a matter of record.

Mr. DE WOLFE: As to whether he has applied or not.

36 The COURT: Is that simply for the purpose of simply proving the act itself?

Mr. DE WOLFE: Yes, sir; that is all.

Mr. DE WITT: The act should be proved by the record itself.

The COURT: I think you may ask the question.

Mr. DE WITT: Note an exception, please.

Mr. DE WOLFE: State whether or not you ever applied for a patent for the premises which embraces this coloring.

Yes, sir; I did.

At the time you applied for the patent, did you know of any lead existing within the part colored red?

No, sir; I did not.

Do you at present know of any lead existing there?

I am sure there is none, as far as a man can be sure.

That is all.

Cross-examined by Mr. DE WITT:

Did you examine in this ground anywhere, except in this portion colored red, for a lead?

I examined in the yellow as well as in the red.

Did you examine here in the Betsy Dahl?

37 I think I did.

At the time you made your application?

Yes; I think I did.

Did you find any lead or lode there?

No, sir; I don't believe there is a lead there to-day.

Did you ever see a lead within the limits of the Betsy Dahl?

No, sir; I never did.
You have been over the ground within the last two years?
Yes, sir.
Have you ever seen the work Dahl has been doing there?
Yes, sir.
Didn't you see a lead there?
No; I found an iron stain which you find all over the country.
Is that on the surface?
I only saw that on the dumps, if you can call it a dump.
Did you ever see any croppings of an iron stain on the surface?
No, sir.

That's all.

38 Mr. DE WOLFE: A paper has been handed to me which purports to be the laws of Summit Valley mining district, and purports to define the boundaries of the district. I offer it in evidence.

Mr. DE WITT: I object to it; it is simply a printed slip without date; there is no evidence that it is correct.

The COURT: Objection sustained.

Mr. DE WOLFE: I will call Mr. Mantle.

LEE MANTLE called and sworn for the plaintiff, and testified as follows:

Examined by Mr. DE WOLFE:

Mr. Mantle, what business were you engaged in in the year 1881?
I was engaged in several different businesses.
I will ask you if you were in anyway connected with the publication of a newspaper?
I was.
What paper?
The Inter-Mountain.
Just examine that and state what it is.

Book shown witness.

It is the bound file of the Daily Inter-Mountain from July 1st to December 31st, 1881.

39 I will ask you to turn to the files of date July 16, 1881—no, about the 20th of July.
The 20th?
Well, the 19th or 20th.
Here it is.
I will ask you if you find an application for a mineral patent by Saly Raunheim published there. The number of the application is 953.
Yes; I find it here.
What is the date of the paper?
July 20, 1881.
You find the application published?
Yes, sir; I do—a mineral application—mineral application No. 953.

I will ask you where that newspaper is published?
In Butte City, Silver Bow county, Montana Territory.

Mr. DE WOLFE: I now offer the mineral application in evidence.
Mr. DE WITT: Does it purport to be for the ground in dispute?
Mr. DE WOLFE: Yes, sir.
Mr. DE WITT: I object, because it has not been shown that it was published by Raunheim or by authority of law. It must be proved that it is published by the order of the register of the
40 land office, and these proceedings are matters of record.
DE WOLFE: I will withdraw the offer for the present.
The COURT: The objection will be overruled, and the notice may be offered for what it is worth.
DE WITT: We except.

DE WOLFE: From whom did you receive that notice?
From the register of the land office.
Did he order it published in your paper?
Yes, sir; we published all such notices at that time; and while I do not remember this particular notice, yet he ordered it.
Would it have been put in your paper unless he had ordered it?
No, sir.
What is the date of the paper?
July 19, 1881.
Now, I will ask you to turn to the file of the paper and see when the last publication was made.
The last publication was made Sep. 20, 1881.
The first was published July 19?
Yes, sir.

DE WOLFE: Now, I offer this in evidence.
41 DE WITT: It goes in under my objection.
DE WOLFE: Read it, please.

Notice of application for patent read to jury. See page —, this transcript.

Cross-examined by Mr. DE WITT:

Have you any personal knowledge as to whether the register ordered that published?
Well, I can't say that I remember of receiving this particular application. I presume I could find the original order.
Wouldn't you testify in the same way as to any other publication in the paper?
Yes, sir.
The only reason is that it wouldn't be there unless ordered?
No, sir; we never publish any unless ordered.
You have no personal knowledge of it?
Our business is conducted that way.

That's all.

N. B. RINGLING called, and testified as follows:

Examined by Mr. DE WOLFE:

Will you examine that application for patent and tell the
42 jury whether it includes the premises in controversy here & colored red?

DE WITT: I object to it. The application will speak for itself.
The COURT: I think he may ask the question.

Yes; it includes that portion colored red.
It takes up a much larger tract?
Yes, sir.
It includes the portion colored red?
Yes, sir.

That is all.
No cross-examination.

DE WOLFE: I offer in evidence the order from the register of the land office ordering the publication to be made.
DE WITT: I object to it.
DE WOLFE: I would like to offer it with the testimony of Mr. Mantle—that it is the same order he received here.
The COURT: While waiting for Mr. Mantle have you another witness you can examine?
Mr. DE WOLFE: Yes, sir.
The COURT: Well, proceed with him.

CHARLES S. WARREN called and sworn for plaintiff, and testified as follows:

43 Examined by Mr. DE WOLFE:

Are you the clerk of this court?
Yes, sir.
I will ask you whether any action was ever instituted or is now pending in this court wherein Henry Dahl is plaintiff and Saly Raunheim is defendant, involving the right to the premises in controversy. First, do you know these premises?
Yes, sir.
I will ask you if there is any action pending in this court involving the right to this ground.

DE WITT: I object to that as irrelevant and immaterial.
The COURT: Do you propose to follow this up by other testimony?
DE WITT: I object to this because it is not proved that the plaintiff here, Raunheim, ever made any application for patent for the premises. He said that he had made the application, and your honor allowed it for that purpose. I object to it because the record has not been introduced. There is no proof of an application for patent.
44 DE WOLFE: I don't know just what the ruling of the court was, but the evidence of Raunheim is before the jury at the present time that he did make an application for a patent.

The COURT: The objection will be overruled.
DE WITT: Note an exception.

DE WOLFE: State whether any suit—state whether the records of this court or the files of this court show whether any suit was instituted or has been since the 20th day of September, 1881, by the defendant here against the plaintiff involving the right to the premises in controversy.

There is not.

Has a suit of that kind been commenced?

No, sir. Mr. Dahl's name does not appear on the records except as defendant.

I will ask you to examine this notice of mineral application—the one marked with pencil.

Yes, sir.

State whether you was one of the attorneys of Saly Raunheim making that application.

Yes, sir; my partner, Mr. Barrett, and myself.

Did you make application for that patent?

Yes, sir.

DE WITT: I object.

45 The COURT: The same ruling. I desire to say I will hear you in relation to this hereafter.

DE WITT: I want to save the exception.

DE WOLFE: You made the application?

Yes, sir.

That is all.

No cross-examination.

EDWARD MILLER called and sworn for the plaintiff, and testified as follows:

Examined by Mr. DE WOLFE:

What is your occupation?

I am superintendent of the Montana Copper Company.

Do you know the premises in controversy between Mr. Raunheim and the defendant?

I do.

I will ask you whether you have ever been over the premises there colored red; whether you have ever examined it.

Yes, sir; I have passed over it frequently.

When the snow was off the ground?

Yes, sir.

I will ask you if you ever examined the ground with ref-

46 erence to seeing whether there are any indications or croppings of a lead on the claim.

I have; I never discovered any croppings.

Did you ever discover a vein or ledge there anywhere?

No, sir.

When did you last examine that ground?

Last fall.

How often have you examined it?

I have passed over it frequently; I live close to it.

State if there are any indications of a ledge on the ground.

No, sir; there are not.

Do you know whether there is any lead or vein existing within that portion colored red?

No, sir; there is not.

No cross-examination.

DAVID LOUIS called and sworn for the plaintiff, and testified as follows:

Examined by Mr. DE WOLFE:

Where do you reside?

In Meadville.

What is your occupation?

47 I am foreman of the Montana Copper Company.

Have you ever followed the business of mining or prospecting?

Yes, sir.

When?

Off and on for the last four years.

Have you done any prospecting in this Territory?

Yes.

Do you know the premises in controversy between plaintiff and defendant in this action?

Yes, sir.

Do you know where the lode claim called the Betsy Dahl is?

Yes, sir.

Do you know that portion of the Betsy Dahl lode, as claimed by the defendant, which forms part of the placer mine claimed by Mr. Raunheim?

I know Dahl claims it.

Do you know that portion that he claims?

Yes, sir.

Have you ever been over the ground?

Yes, sir.

When?

Last summer—the last two summers.

48 Have you ever examined the ground, as to whether there is a lead or vein there?

There is no cropping there at all.

Did you ever examine it with particular reference to that fact?

Yes; I have been digging there.

Did you ever, from any developments or work you have done, found [find] anything resembling a lead?

No, sir; nothing but sand and gravel.

That is all.

No cross-examination.

DAVID N. UPTON called and sworn for the plaintiff, and testified as follows:

Examined by Mr. DE WOLFE:

Do you know the premises in controversy here? Do you know where the Betsy Dahl location is?

No, sir.

Do you know where Mr. Raunheim's placer claim is?

Yes. I don't know the claim exactly; I know the ground.

Have you been over that ground often?

Yes; I have been over it very often.

Have you done prospecting there or in that vicinity?

49 Well, no, sir; I don't know that I ever did on that ground.

Are you able to tell from that map the location of the ground, supposing this portion in red to represent the Betsy Dahl lode? Have you ever been on the premises?

I think I have.

Have you ever been on this?

Yes.

Been over that ground?

Yes, sir.

Did you ever examine it with reference to whether there are any surface indications or a lead or vein there?

Well, I don't remember of ever seeing any, although I didn't pay particular attention.

Do you know whether any lode or vein exists there?

None that I know of.

Do you know whether there are any croppings there?

On the east side of the creek?

Yes.

None that I know of.

Cross-examined by Mr. DE WITT:

50 You never examined it to see whether there was a quartz lode there?

Well, I never saw any.

Did you examine there?

I never saw any on the east side of the creek.

Did you prospect it?

I never sunk any holes.

Notwithstanding you went over the ground, might there not be a lead there?

Yes; it might be.

That is all.

JAMES T. MATTINGLY called and sworn for the plaintiff, and testified as follows:

Examined by Mr. DE WOLFE:

Where do you reside?

East of the Montana copper smelter.

Do you know the premises in controversy in this action?
Yes, sir.
Do you know where the Betsy Dahl location is?
Yes, sir.
Know the location?
51 Not very particularly. I have been over the ground that is said to be the Betsy Dahl.
Do you know where the placer claim claimed by Mr. Raunheim is?
Yes, sir.
Have you been over that ground often?
Yes; a good many times.
Do you know where the north line is?
This is north.
Do you know where the boundaries of the Betsy Dahl are?
Well, I have been across the ground over towards the smelter works.
Have you been over that portion of the placer claim claimed by the Betsy Dahl lode?
Yes, sir.
Have you ever examined the ground with reference to determining whether there is a lead there?
Not particularly—not to prospect it. I went across it back and forward.
Are there any croppings on the surface?
I never seen any.
Have you worked on that ground?
No, sir; not on that particular ground.
Never dug there at all?
52 No, sir; not on that particular ground.
Not on the ground embraced in the Betsy Dahl location?
No, sir.

That is all.

No cross-examination.

THOMAS FOX called and sworn for the plaintiff, and testified as follows:

Examined by Mr. DE WOLFE:

Do you know where the Betsy Dahl lode is?
Yes, sir.
Do you know what portion of the Betsy Dahl extends on the placer ground claimed by Mr. Raunheim?
I don't know the boundaries; I know about where it is situated.
Have you been over the ground yourself?
Yes, sir.
Did you make any careful examination of the surface?
No, sir; I did not.
Did you make any examination of the surface?
No, sir.

53 Did you ever examine the surface to see whether there was a lode or vein or croppings on the ground?

I never saw any croppings there.

Did you ever work on the ground?

No, sir.

Never done any digging there?

No, sir.

That's all.

Cross-examined by Mr. DE WITT:

You never examined it carefully for quartz?

No, sir.

There might be a quartz lead there now and might have been for ten years and you not know it?

There might be; yes, sir.

That's all.

LEE MANTLE recalled for plaintiff, and testified as follows:

Examined by Mr. DE WOLFE:

Paper shown witness.

I will ask you to examine that and state whether you ever received it, and state what it is.

Mr. DE WITT: I object to this. This purports to be signed by J. H. Moe.

54 The COURT: The witness may answer it.

I will ask you if you ever received that document?

I have no recollection of this particular one, of having received it; we received so many; we received hundreds of them.

Are you familiar with the signature of J. H. Moe?

Yes, sir.

Is this his signature?

Mr. DE WITT: I object. How are you familiar with it?

By having received so many of these applications from him.

How do you know they are from him by anything more than having been signed by him?

I have often received other communications from Mr. Moe.

Did you ever see Mr. Moe's writing?

Yes, sir.

Is that his signature?

Yes; I should say that is Mr. Moe's signature. It is about as he writes his name, as I remember it.

55 You are not able to state positively in re-ard to receiving this particular document?

No, sir; I received so many of them. I don't know where you got this; I presume it came from the Inter-Mountain office.

Mr. DE WITT: I object to any presumptions.

Mr. B. RINGLING recalled for plaintiff, and testified as follows:

Examined by Mr. DE WOLFE:

Mr. Ringling, where did you get that paper?
From—I got it at the Inter-Mountain office; Mr. Monteith gave it to me.
At the Inter-Mountain office, in this city?
Yes, sir.

That is all.

No cross-examination.

LEE MANTLE recalled.

Examined by Mr. DE WOLFE:

Now, I will ask you what that paper is?
It is the original order for publication for mineral application No. 953, and published in the Inter-Mountain.
The same that you testified to here before?
56 After hearing Mr. Ringling say he got it at the Inter-Mountain office—I was going to say unless it came from there, I could find it in our safe.

Mr. DE WOLFE: We offer this in evidence.
Mr. DE WITT: I will waive the reading of it.
The COURT: It will be considered in evidence as if read to the jury.

Admitted in evidence, marked Exhibit B, as follows:
Order of register U. S. land office to Inter-Mountain newspaper to publish application aforesaid. See page — of this transcript.

Mr. DE WITT: I desire to make a motion to strike out some of the evidence here.

Defendant files the following motion:

Second Jud. Dist. Court, County of Silver Bow, Montana.

SALY RAUNHEIM, Plaintiff,
vs.
HENRY C. DAHL, Defendant.

Upon the close of plaintiff's testimony comes defendant and
57 moves the court to strike out from the evidence all of the testimony of the witness, George F. Marsh, upon the subject of a location of the ground in dispute, for the reason that said testimony does not disclose any location of the premises in controversy under the laws of the United States, the Territory of Montana, or any local laws and regulations of miners or any valid location or claim of said ground in any way; and also the deed of said George F. Marsh, E. A. Nichols, and S. E. Nichols of the placer ground in controversy to plaintiff, for the reason that it has not been shown that said grantors had a right or title to said ground, and said deed could therefore —

no rights to the plaintiff; and also all evidence of the plaintiff as to making an application to the United States for a patent for said ground, for the reason that the best evidence of said application is the record of the United States Land Office in the matter of said application, and that the said evidence of plaintiff is secondary and incompetent, it not being shown that the record was lost or
58 for any reason inaccessible; also the evidence of Charles S. Warren as to his and his partner making application for patent for said ground, as attorneys for said plaintiff, in so far as the evidence of said plaintiff and Warren goes to show the contents of said application, said evidence not being followed up by record evidence of said application; and also the evidence of the witness, Lee Mantle, as to the publication of the notice of application for patent, for the reason that it was not shown by the best evidence, the record, that such an application had ever been made.

RANDOLPH & DE WITT,
Def't's Attorneys.

Argument by counsel.

By the COURT: You may have until to-morrow morning to present authorities.

Court adjourned until March 28, 1884, at 9 o'clock a. m.

59 March 28, 1884, at 9 o'clock, court called.

The COURT: The motion to strike out will be overruled, and you may take your exception, and defendant files his bill of exception No. 1, which is as follows, to wit:

2d Judicial District Court, County of Silver Bow, Montana.

SALY RAUNHEIM, Pl'ff,
vs.
HENRY C. DAHL, Def't.

Def'ts Bill of Exception No. 1.

The above cause coming on regularly for trial on March 27, 1884, one of the days of the March term of the above court, and being tried on that and the following day, the following testimony by the following-named witnesses was given; to all of which testimony the defendant objected; which objections were all overruled by the court, and went to the jury under objection of defendant.

Said testimony was as follows:

FRANK MARSH, called, sworn, and examined on the part of plaintiff, testified:

"I was a party to the location of a tract embracing the
60 ground claimed by the plaintiff in this action. Before the location was made I was on the premises several times. I made out a notice of location and posted it on the ground, claiming

the premises for myself, E. A. Nichols, and S. E. Nichols, and filed a copy with the county recorder. I did nothing more towards locating the premises than posting a notice on the claim."

The defendant objecting to the above testimony on the ground that the local laws must be proved before the above evidence would be competent, *and* the court ruled that the evidence might remain, but would be stricken out unless followed up by evidence of the local rules and regulations, and, after added, this testimony may remain as it is, and we will see before you go to the jury whether it is competent or not.

The foregoing evidence by the witness Marsh was the only evidence in the case on the part of plaintiff upon the subject of the location of the ground in controversy claimed by plaintiff, and there was no evidence on the part of plaintiff as to any rules or regulations of miners, and the contents of the location notice were
61 not offered or proved in evidence.

A deed purporting to be from said witness Marsh and E. A. Nichols and S. E. Nichols to plaintiff of the ground claimed by plaintiff was then offered and read in evidence under the objection of defendant, for the reason that it had not been shown that said grantors ever located the premises described in the deed or had any right, title, or interest in or to the same.

SALY RAUNHEIM was then called, sworn, and examined on his own behalf, and testified :

"I am plaintiff in this action. I applied for a patent on the premises described in the complaint and claimed by me in this action."

Question by COUNSEL : State whether or not you ever applied for a patent for the premises claimed by you in this action.

Answer. Yes, sir; I did.

To which said evidence defendant objected on the ground that the record of said application in the United States land office was the best evidence of said application, and until it was proved that said evidence was unobtainable the testimony of plaintiff above
62 was incompetent; all of which above testimony by said plaintiff went in under objection of defendant.

Mr. LEE MANTLE was then called by plaintiff, and testified that the following order from the register of the United States land office at Helena, M. T.——

"The above notice to be published for sixty days in the Daily Inter-Mountain, a paper published daily at Butte, Silver Bow county, Montana, at the expense of the applicant.

J. H. MOE, *Register.*"

This order, being written below the notice on the following page of this transcript, was received by the Inter-Mountain Publishing Company, of which he was business manager, and that the following notice of application for patent, to wit :

"*Mining Application No.* 953.

"UNITED STATES LAND OFFICE,
HELENA, M. T., *July* 16, 1881.

Notice is hereby given that Saly Raunheim, whose post-office address is Butte, Montana, has this day filed his application for patent to fifty-nine and fifty-six hundredths acres of placer-mining ground, situated in no organized mining district, Silver Bow county,
63 Montana Territory, and being more particularly described by legal subdivisions as follows, to wit: The east half of lot 6, the east half of lot 9, and the south half of lot 8, of section number 8, township number 3 north, range number 7 west, or the east half of the east half of the southwest quarter and the south half of the southeast quarter of the northwest quarter of section 8, township 3 north, range 7 west, of principal meridian, Montana, upon which a notice of intention to apply for patent was posted on the 30th day of June, A. D. 1881.

The location of this mine is of record in Book H, page 115, miscellaneous records of Deer Lodge county. The adjoining claimants to these premises are the Montana Copper Company, placer, and the Mat lode, lot number 89, claimed by Joel W. Ransom *et al.*, on the west and the placer claim of R. S. Jones *et al.* on the south.

J. H. MOE, *Register.*

BARRETT & WARREN,
Att'ys for Applicant.

July 19se19."

—by the plaintiff for the premises by him claimed in this action
64 was published for 61 days, as in said notice set forth, all of which testimony of witness Mantle went in under the objection of defendant that the same was incompetent and immaterial, on the ground that it had not been shown by the best evidence, the record of the United States land office, that plaintiff had ever made an application for patent.

Then, upon the close of plaintiff's testimony, the defendant files a motion to strike out from the evidence all the testimony as aforesaid; which said motion is as follows, to wit:

2d Jud. Dist. Court, County of Silver Bow, Montana.

SALY RAUNHEIM, Pl'ff,
vs.
HENRY C. DAHL, Def't.

Upon the close of plaintiff's testimony comes defendant and moves the court to strike out from the evidence all of the testimony of the witness, George F. Marsh, upon the subject of a location of the ground in dispute, for the reason that said testimony does
65 not disclose any location of the premises in controversy under the laws of the United States, the Territory of Montana, or

any local rules and regulations of miners or any valid location or claim of said ground in any way; and also the deed of said George F. Marsh, E. A. Nichols, and S. E. Nichols of the placer ground in controversy to plaintiff, for the reason that it has not been shown that said grantors had a right or title to said ground, and said deed could therefore convey no rights to the plaintiff; and all evidence of the plaintiff as to making an application to the United States for a patent for said ground, for the reason that the best evidence of said application is the record of the United States land office in the matter of said application, and that the said evidence of plaintiff is secondary and incompetent, it not being shown that the record was lost or for any reason inaccessible; also the evidence of Charles S. Warren as to his [he] and his partner making application for patent for said ground as att'ys for said plaintiff, in so far as
66 the evidence of said plaintiff and Warren goes to show the contents of said application, said evidence not being followed up by record evidence of said application.

And also the evidence of the witness, Lee Mantle, as to the publication of the notice of application for patent, for the reason that it was not shown by the best evidence—the record—that such an application had ever been made.

RANDOLPH & DE WITT,
Def'ts Att'ys.

Whereupon the court overrules said motion, and the defendant duly excepts to said ruling, for the reason that all of said testimony is incompetent, immaterial, and is secondary and not the best evidence and was not followed up by any evidence by which it was made material; and defendant asks that this his bill of exceptions be signed, which is done this 28th day of March, 1884.

WM. J. GALBRAITH,
Judge 2nd Jud. Dist. Court, Montana.

Mr. DE WITT: I desire to file a motion for nonsuit.

Mr. DE WOLFE: Before the motion is filed I desire to recall Mr. Raunheim to prove one matter.

67 The COURT: This is entirely within the discretion of the court. In a late case, where the case had entirely closed and the court refused to admit testimony, it was found to be error. You may examine Mr. Raunheim.

SALY RAUNHEIM recalled, and testified as follows:

Examined by Mr. DE WOLFE:

Mr. Raunheim, after the sale or conveyance of this property to you, who has been in possession of the property?

Since what time?

Since the time it was conveyed to you.

I have.

State what work you have done on the premises.

Well, I had all the work done that was necessary in compliance to the laws for patent.

State what you did.

Well, when I bought the land in question there was already five hundred dollars' worth of work done, and I did all the necessary work in addition to that that it required by the laws in an application for a patent.

Can you tell how much money you expended on the claim after you bought it?

68 I don't remember exactly the figures.

Can you approximate it?

No, sir; I cannot. I know all the work was done that was necessary and proper—the amount required by law.

Did you ever post any notice on the claim containing the application for patent?

Yes; I posted the notice required by law.

Who posted it?

I did.

How long did it remain there?

At least the 60 days required by law. I watched it that long. After that I did not watch it.

Cross-examined by Mr. DE WITT:

What did you do? What was the nature of it?

The nature?

Yes.

Well, we continued to sink several shafts. They are to be seen on the ground yet.

That's all.

Plaintiff rests.

Motion for nonsuit filed, read, and argued by counsel, to which reference is hereby made, and the same is hereby made a part of this instrument.

69 2nd Judicial District Court, Silver Bow County, Montana.
March Term, 1884.

SALY RAUNHEIM, Pl'ff,
vs.
HENRY C. DAHL, Def't.

Motion for Nonsuit.

At the close of the testimony of plaintiff in the above case, on March 28, 1884, one of the days of the March term, 1884, of the above court, said cause being then on trial before a jury, comes defendant and moves for a nonsuit in the above cause, for the reason that the evidence does not disclose any cause of action in favor of plaintiff against defendant in this, to wit:

1st. That it is not shown by the evidence that plaintiff or his

grantors or predecessors in interest ever made any valid location of the premises in controversy or any part thereof.

2. That it is not shown by the evidence that the premises in controversy are placer mining ground or contain any valuable mineral deposits or are valuable for placer mining purposes.

70 3rd. That it is not shown by the evidence that the alleged locators of the premises in controversy or the plaintiff or his grantors or predecessors in interest or any of them ever made any discovery of mineral or valuable mineral deposits of any kind on said ground.

4. That it is not shown by the evidence that the plaintiff was in possession of the premises in controversy or any part thereof at the time of the commencement of the action.

5. That it is not shown by the evidence that the plaintiff or his grantors or predecessors in interest or any or either of them were ever in possession of the premises in controversy or any part thereof.

6. That the plaintiff has not proved any title in himself at the commencement of the action in the premises.

7. That plaintiff has not shown any application for a United States patent.

RANDOLPH & DE WITT,
Def't's Attorneys.

March 28, 1884.

Filed March 28, 1884.

R. L. DAVIS, *Clerk*,
By CHARLES S. WARREN,
Deputy Clerk.

71 The COURT: I have read this case of 2nd Montana pretty carefully, and I think there is evidence here to go to the jury as to whether this is mining ground or not; also in relation to this question of possession. You can have special findings, this being an equity case. This motion for nonsuit will be overruled.

Mr. DE WITT: Note our exception, and defendant files his bill of exceptions No. 2.

2nd Judicial District Court, County of Silver Bow, Montana.

SALY RAUNHEIM, Pl'ff,
vs.
HENRY C. DAHL, Def't.

Def't's Bill of Exception No. 2.

The above cause being on trial March 28, 1884, one of the days of the March term, 1884, of the above court, and the plaintiff having closed his testimony, the defendant files his motion for a nonsuit, to which motion reference is hereby made, and the same is hereby made a part of this bill of exceptions; which said motion is overruled; to which ruling of the court the defendant duly ex-

72 cepts, for the reason that said motion should be sustained on

the grounds set forth therein, and asks that this his bill of exceptions be signed, which is done this 28th day of March, 1884.

WM. J. GALBRAITH,
Judge 2nd Jud. Dist. Court, Montana.

Filed March 28, 1884.

R. L. DAVIS, *Clerk*,
By CHAS. S. WARREN,
Deputy Clerk.

The defendant then called, swore, and examined witnesses on his behalf, the names of whom and their testimony and the whole thereof, and the objections of counsel and exceptions thereto, and the exhibits introduced are all in full as follows, to wit:

T. C. Porter, Henry Meagher, Joseph Tuey, and H. C. Dahl, called and sworn for defendant.

H. C. DAHL called, and testified as follows:

Examined by Mr. DE WITT:

Are you the defendant here?
Yes, sir.
73 Where do you reside?
In Butte City.
Do you know the plaintiff?
Yes, sir.
Do you know the ground in dispute?
Yes, sir.
Know the Betsy Dahl location?
Yes, sir.
What connection have you with it?
I located it.
What time?
In the spring of 1881.
Where is it situated?
It is generally called Meadorville.
How is it with reference to the plaintiff's ground—the east half of the southwest quarter of section 8 north, range 7 west?
It takes in a portion of that ground, I believe, according to the survey.
What did you do with reference to locating it?
I sunk a shaft and made a discovery.
What else?
Had the ground surveyed.
Had the ground surveyed?
74 Yes.
When you sunk the shaft what did you find?
I found mineral deposits.
What kind?
Well, according to the assays it was mineral bearing.
Did you have it assayed?

claim and otherwise, and the metals, minerals, and valuable deposits of every kind contained in said veins, lodes, or ledges, or within said boundaries, which are given or allowed by the laws of the United States aforesaid or of the Territory of Montana.

The mining claim hereby located is situated in the Summit Valley mining district, Silver Bow county, Montana Territory, and is located, according to the public survey, in the S. W. ¼ of sec. 8, T. 3 N., R. 7 W., base and meridian Montana Territory. The adjoining claims are the Picalo lode mining claim on the west and the Hattie Harvey lode claim on the north. This location is distinctly marked on the ground, so that the boundaries can be readily traced,
80 by a stake set at discovery shaft, where this notice and statement is posted this — day of March, A. D. 1881, and by substantial posts or monuments of stone at each corner of the claim; and the exterior boundaries of the claim, as marked by said posts or monuments, are as follows, to wit:

Beginning at the northwest corner of the claim, from which the Hattie Harvey shaft bears N. 60° W. 136 ft. distant and the point the main road up Silver Bow creek passes under the tramway of the Montana Copper Company, leading from their hoisting works to their smelting furnace, situated on the east side of Silver Bow creek, bears N. 50° E. 50 feet distant, and running thence S. 10° E. 600 feet to a stake and mound at the S. W. corner; thence east across Silver Bow creek 1,500 feet to the S. E. corner, a stake and mound; thence west across Silver Bow creek 1,500 feet to the place of beginning. The undersigned intends to hold this claim under and according to the laws of the United States and the Territory of Montana, and to record this notice and statement under oath in the county recorder's office of said county, as provided by law.

Dated this ninth day of March, 1881, and signed—

HENRY C. DAHL,
Locator and Claimant.

81 TERRITORY OF MONTANA, } ss:
County of Deer Lodge, }

Henry C. Dahl, being duly sworn, says that he is of lawful age and the locator and claimant of the quartz lode mining claim mentioned and described in the foregoing notice and statement of location and claim and the person whose name is subscribed thereto as a locator and claimant; that he knows the contents of said notice and statement foregoing, and that the matters and things therein stated are true.

HENRY C. DAHL.

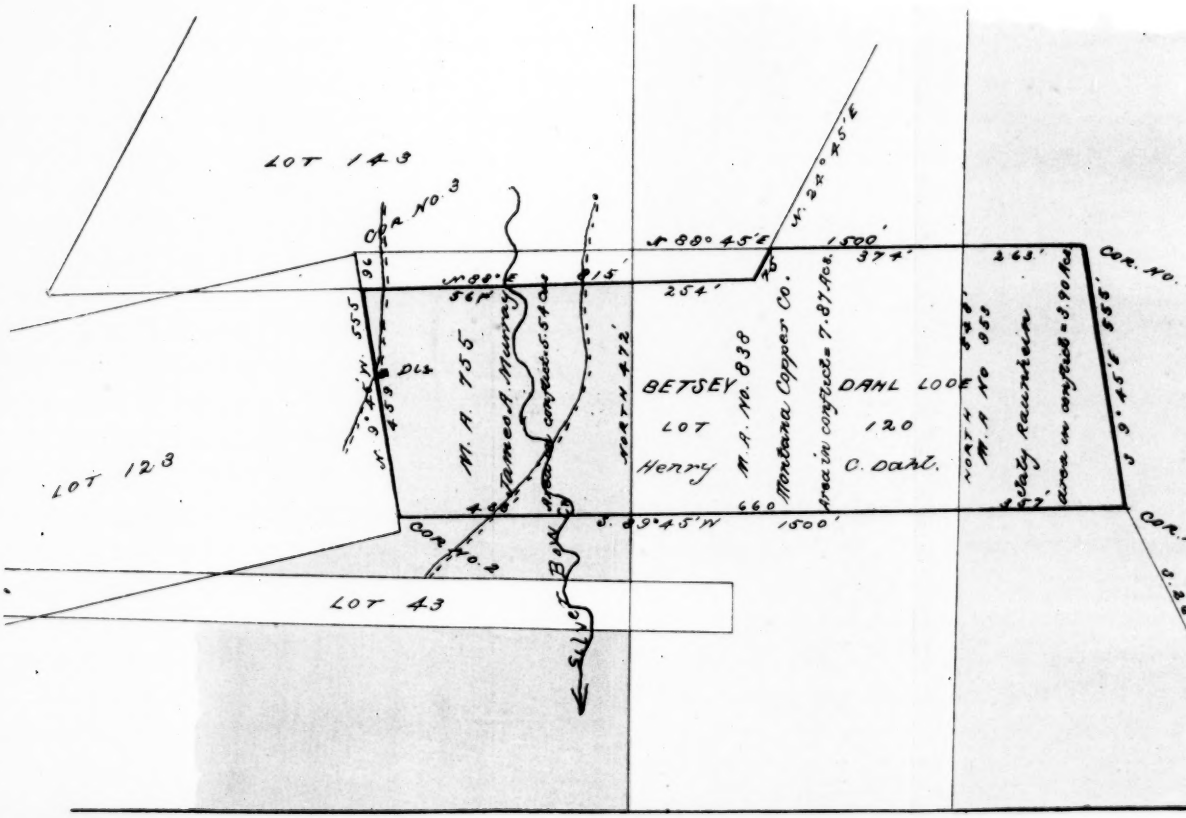
Subscribed and sworn to before me this 9th day of March, 1881.
[NOTARIAL SEAL.] JOS. H. HARPER,
Notary Public.

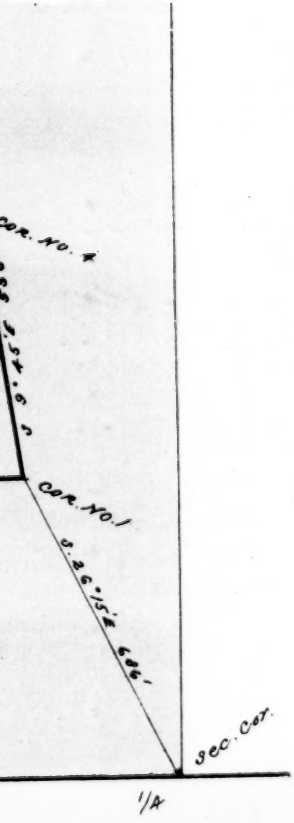
Filed for record March 11, A. D. 1881, at 8.10 o'clock a. m., and recorded in Book "A" of Lode Locations, on page 18, records of Silver Bow county, Montana.

JAS. S. McANDREWS,
County Recorder.

No. 352.
Dahl
Raunheim
} M. 84

SILVER BOW COUNTY M. T
T. 3 N. R. 7 W
Section 8





Mr. De Witt: I would like to call Mr. Harper to identify
82 this map before I go on with Mr. Dahl.

Joseph H. Harper called and sworn for the defendant, and testified as follows:

Examined by Mr. De Witt:

What is your occupation?
Civil engineer.
Where do you reside?
Butte City, Silver Bow county, Montana Territory.
Do you know H. C. Dahl, the defendant?
Yes, sir.
Do you know where the Betsy Dahl lode claim is?
Yes, sir.
Do you recognize that plat?
Yes, sir.
By whom was that made?
That is my work.
Just explain it to the jury.

The top of the map is north; application, No. 755. James A. Murray is this blue. This yellow is the Montana Copper Company. This ground of S. Raunheim is tinted green. The Betsy Dahl lode is down here, with the dark lines around the ground.

What is this?
83 That is the conflict with the Hattie Harvey.
This green portion, how is that described by subdivisions?

I can describe it. It is the east half of the north of the east half of the southeast of the south half of the northeast of the northwest.

And the way in which the Betsy Dahl conflicts with the Saly Raunheim ground is represented how?

It conflicts with three and ninety-one hundredths acres.
Where is the discovery?
The discovery of the Betsy Dahl is on the northwest.
Does that map correctly represent the ground it purports to?
Yes, sir.
All this ground here is correct?
Yes, sir.
Lots, numbers, and areas?
This is a copy from the record of the final survey in my office.

That's all.

No cross-examination.

H. C. Dahl recalled, and testified as follows:

84 Examined by Mr. De Witt:

Look at that map. Do you recognize the ground?

Map.

(Here follows map marked page 84.)

85 Yes, sir.

Now, this discovery you have testified about, where is that located?

Right in there—within 40 feet of that line.

What line?

Of this Picalo lode—the east end line of the Picalo.

Will you tell the jury where the stakes were set you spoke about?

Yes. These corners were placed right there—one there, one there, and one there. When the patent survey was made it was left out, because it took in portions of the Hattie Harvey, and we left that ground out.

State what you have done in the way of developing the vein.

I have developed the vein and represented it since the discovery was made.

This is dated March 9, 1881?

Yes; that is the time the record was made.

It was recorded March 11?

Yes, sir; it was some time prior to that discovery.

Was it prior or afterwards you discovered the wall?

86 It was prior. I had the shaft down twenty feet when that was filed.

What have you done in the way of development?

I sunk a shaft down 30 feet and cross-cut the bottom of the shaft 12 feet the second year.

What have you done in the way of representing?

I represented the second year that way.

The third year what did you do?

I worked a shaft about 30 feet north of the discovery shaft. There is a shaft there about 30 feet, and I run a cross-cut about 12 feet.

Where is that on the map?

About there.

The next year what did you do?

That was the third year I had reference to. I have not represented this year yet.

Where have you traced the vein?

I traced it down to the ground west here. There was not much croppings here, but there was some.

Where were the croppings you spoke of? Just indicate.

There the croppings show in the Picalo; that don't amount to anything, but there is the same kind of quartz here. I can't

87 tell if it had any mineral value, but there are croppings there and a large amount of croppings indicating the same kind of quartz.

What did you do to ascertain what it was worth?

I had it assayed. Bill Stevens assayed it and said——

Mr. De Wolfe: Never mind what he said.

Mr. De Witt: Do you know yourself what it assayed?

Mr. De Wolfe: I object, unless the witness is an assayer.

Mr. De Witt: What Stevens is that?

William Stevens.

What did you do in regard to ascertaining whether it was mineral-bearing quartz?

I asked him to take the stuff out of the shaft and assay it.

Well, what did he do?

He took a piece out of the shaft. He went in the shaft himself and took it home to assay. I didn't see him assay it.

Did he take it out of the shaft himself?

Yes; he was there when the ground was located.

Did he make the return to you?

88 He didn't make any written stipulation. He told me.

How did you know it was mineral bearing; are you a miner?

I have prospected since 1876.

In what country?

In the "Black Hills" for two years, and some in this country; not a great deal in this country.

Is your experience such that you could recognize mineral-bearing quartz?

Yes, sir.

What do you say about that quartz?

I call it mineral-bearing quartz.

About how far did those croppings extend? Could you indicate on the map?

No, sir; I don't know anything about the section lines.

Take it east from the shaft, how many feet would you say?

I should judge somewhere along about 40 or 50 feet, and maybe a hundred feet down this way; this is lower ground. The Silver Bow creek comes through here somewhere, which is not marked on this map.

89 About how far east from your shaft does the creek come?

It comes between three and four hundred feet.

Can you indicate on the map about where the creek runs?

About there.

Mr. HARPER: That is where it is, right there.

Mr. DE WITT: Now, what do you say as to the croppings being visible or not?

They are visible in through here.

What is their direction?

Running easterly and westerly.

How did you locate the claim with reference to the direction of the croppings?

I located the claim easterly and westerly. The wall of the shaft shows that.

How did you locate it with reference to the vein?

Well, that's the way I located it.

What way; across the vein or lengthwise?

I located it lengthwise on the lead, of course.

When did you become familiar with that ground?

In the spring of 1880, the year before I located the ground.

90 You became familiar with it then. How about these croppings you speak of?

Well, I seen them there. I have ploughed up some of them.

When did you first see them?

In the spring of 1880, when the snow got off.

Are you a citizen of the United States?

I have got my first papers. I am not a born citizen. I took out my first papers in 1871. I have lived in the country since 20 years ago.

Where is that lead located—in what district?

It is located in Summit Valley mining district.

Is this description correct in the notice of location?

Yes, sir.

What do you know, if anything, about Raunheim's possession of this tract?

I don't know. I know now, but I didn't know anything about anybody being in possession of any ground there at all.

Since you located it where have you been living?

I lived part of the time out there, but I have lived here in Butte for two years.

How long did you live out there after you located it?

91 I was living there when I located it, and I lived there until the 10th of November the following fall. Then I moved uptown.

You were living on the ground?

Yes, sir.

Did you ever see Raunheim around there when you were living there?

Yes; I used to see him frequently.

What did you see in regard to his possession?

Nothing.

Was he ever on the ground?

I don't know. I can't say. I never saw him on the ground.

Did you ever see him mining there?

No, sir.

Have you looked over the ground pretty carefully?

Yes, sir.

Is there any placer-mining work done on it?

I never saw any.

Would you have seen it if it had been done?

Yes, sir.

What do you say as to the placer-mining character of the ground; did you ever examine it?

I never did much. In fact I never saw the ground opened for placer-mining purposes.

92 Did you ever placer mine yourself?

Yes; some.

From your experience, are you able to form any judgment of land valuable for that purpose?

Yes, sir.

What do you say about that?

I don't know that a man could raise a color in any part of that land.

What do you say about its being valuable for placer mining?
I can say that it is not.
Did you ever do any prospecting there?
Not on that side of the creek.
What is the character of the land?
It appears to be on top a loose, sandy loam. It is commonly called black sandy loam.
What is it further down?
Well, I examined some shafts that have been sunk there. I don't know how long ago. It appears to be a loose gravel. It don't seem to be the hard substance that bears placer gold.
How deep is bed-rock?
I never saw any.
How deep have you been down?
93 Well, there are shafts sunk there that are partially filled up now.
Have you ever done any placer prospecting there since you sunk your shaft?
Yes; I prospected there with a pan some and couldn't raise a color.
Did you prospect on this side of the creek?
No, sir.
Are there any indications of placer mining there?
No, sir.
Did you ever make application for a patent for the Betsy Dahl?
Yes, sir.
When was it?
The application was made some time in 1881; the order for the survey was made in July.

Mr. De Wolfe: I object.

Mr. De Witt: Does this answer here clearly describe that claim?
Yes, sir.
The portion in conflict?
Yes, sir.
Do you know what the facts were about this vein being visible?
94 Yes; it was visible.
The one you located?
Yes, sir; I struck the first pick in it myself.
You say you lived there?
I lived on the ground, with the exception of two weeks, for a year and a half.
How much work have you done on the claim each year?
I done a hundred dollars' worth of work each year.
What kind of work?
Mining work in the bottom of the shaft.
What do you say as to whether or not the surface of that claim is required for working the vein?
It is.

I don't mean for that particular shaft, but for developing the claim?

Yes; it is required.

How wide is it?

550 feet.

That's all.

Cross-examined by Mr. DE WOLFE:

95 How long before you made the location did you know of the existence of the vein there; you say you knew it sometime before?

I knew it from the croppings the spring before.

When did you make that location?

Some time in the latter part of February or the first of March.

You knew it the year before?

I knew it the summer before, that there was a lead or vein somewhere on the ground.

How did you find it out?

From the croppings I discovered right there when I was ploughing the ground.

You ploughed up the croppings?

I ploughed up some that were visible to a certain extent. I ploughed the ground and raised the crop on it.

Was the rock you ploughed up loose?

Yes; it was loose, of course. Croppings are generally loose.

Was it rock in places?

What do you mean?

Do you know what rock in place is?

Well, I can't say that I do.

96 Don't know what rock in place is?

I can't say positively. Do you mean solid bed-rock?

I mean rock fixed in the formation as nature made it.

I should judge it was.

You say you discovered a vein there?

I did.

How wide was this vein?

That I don't exactly know.

Well, did you discover mineral?

I did.

How much mineral did you discover?

I can't tell exactly what the width of the mineral was, but the vein at the bottom of the shaft looks to be a pretty wide vein.

How wide?

Well, there is a cross-cut of 12 feet at the bottom of the shaft, and we have no hanging wall.

You have a foot wall?

Yes.

What is it?

97 It is composed of granite. At the bottom of the shaft it became hard; at the top it was soft granite.

What is the depth of the shaft?

It is about 30 feet.

You say you have a cross-cut at the bottom at the depth of 30 feet, and have no hanging wall?

No, sir. We run the cross-cut 30 feet south.

Is that cross-cut in mineral?

It appears to be.

Mineral formation all the way through? What do you say in regard to the croppings there?

I say along here are slight croppings.

At what distance from the shaft? This is the west boundary?

Yes.

What is the distance from the shaft to the west boundary?

Well, it is within 40 feet

This is the point of discovery?

Yes, sir.

That is where you posted that notice up?

Yes.

I understand you to say you found croppings on the Picalo lode?

98 Yes.

The croppings on the Picalo are the same in character and description as those found here?

Yes, sir.

And this seems to be a continuation of the vein from there to here?

That is what it appears to be; yes, sir.

What is the distance from that shaft to the Silver Bow creek?

Well, I judge, about 350 feet; between that and 400 feet. I didn't measure the ground.

How far did the croppings extend up here?

About two-thirds of the way to the creek. Here the ground is so low that it is covered up with mud.

The croppings show two-thirds of the way between the discovery shaft and the creek?

Yes, sir.

That would be about 200 feet?

Yes; something like that.

Didn't you state that it showed for 50 or 60 feet?

Well, of course, if it showed for 50 or 60 feet it may have showed further down.

You now say it might have been or is 200 feet?

99 Somewhere about there.

The croppings show on the surface?

Well, slightly; the ground is low and covered with sand.

It is higher as you go to your shaft?

Yes, sir.

As you go to the creek they become covered up?

Yes. Here you couldn't see it until I turned the sod over with a plough. I raised two crops down here.

How much higher is the discovery shaft than the creek itself?

I didn't measure it.
Can you approximate it?
No; I can't.
Is it 50 feet higher?
I don't know.
Is it 40?
I can't say; I am not a surveyor.
All the work you ever did on the ground is done at this point?
Yes, sir.
Never did anything across the creek at all?
No, sir.
100 Never did any prospecting for placer across the creek?
No; because I didn't think it was prudent.
You never did anything towards the development of the lead?
Not across the creek.
All the work you did is in this shaft?
This shaft and the one north of it.
How deep is that shaft?
About 30 feet.
Both about 30 feet?
Yes, sir.
Which is the shaft you run the 12-foot cross-cut in?
I run it south from this shaft, and I run one north from this one 12 feet. I couldn't get any deeper on account of water.
How far are the two shafts apart?
About 30 feet.
What depth is the upper shaft sunk?
About 30 feet deep. I didn't measure it, but it is fully that deep.
Did you sink it yourself?
I hired one or two men and they worked with me. I was living right there.
101 Where?
Right there. There is my house that I built myself in the spring of 1880. This shaft is not over five feet from that house—from the corner of the house. Here is where the county road comes in and runs right by that shaft.
Now, when did you commence doing that work on the shaft?
Somewhere on or about the latter part of February, 1881, or the first of March. I can't tell the date exactly.
Did you commence doing the work before or after the location of the claim?
Before. I started in there and worked two or three days alone. The ground was frozen pretty hard until I got down on the ledge. The solid ledge is within five feet of the surface.
Did the ledge have any pitch?
It pitches a little to the south; I should judge about a foot and a half in 30 feet.
You found a ledge there that you run through 30 feet without finding a hanging wall?
Yes; the formation is the same all through.
What is the formation?

102 Well, it is mineral formation.
What kind?
According to the assay, it is gold and silver.
You didn't assay it yourself?
No, sir.
It has the appearance of silver?
Yes, sir.
Anything else?
Well, there might be some copper in it.
Do you know whether there is or not?
No; I don't know.
What is the strike of the vein in this other shaft?
Easterly and westerly.
Is the upper shaft sunk on the vein?
No; it is north of the vein.
Well, is there any development in the shaft?
Yes.
State what it is.
Well, the cross-cut runs north about 10 feet, and there seems to be a copper deposit. It will show on the dump to-day.
Is that the same vein this shaft is sunk upon?
No, sir; it appears to be an entirely different vein altogether.
103 How do you know?
Because there is a wall here, and that vein don't come up to the wall. The wall runs in that direction.
That is what you call the hanging wall of the vein?
I call it the foot wall.
The vein pitches the other way?
Yes; away from it.
Where did you say the claim is?
It is situated in what is commonly called Meaderville.
What mining district?
Summit Valley.
How do you know that?
Well, from the surveyor telling me, I believe.
You know it because you have been told?
I always understood it was Summit Valley mining district.
That is all you know about it?
Yes; I never examined the records.

Mr. De Wolfe: Now, I move to strike out all that testimony in regard to Summit Valley mining district.
The Court: I will consider this matter. You may go on.
104 I will rule on this motion after awhile.

Mr. De Wolfe: Do you know of your own knowledge where the boundaries of Summit Valley mining district are on the east?
Well, as I stated before, I have always understood——
I don't want to know that. I ask you if you know of your own knowledge.
I never read the rules and regulations.
Do you know?

Well, I certainly can't have any knowledge unless I read the laws.

Then you don't know?

Certainly not.

I understood you to say you never did any work on the east side of the creek.

No, sir; I never did.

Have you ever done any prospecting there?

Well, no; at present I have not.

You certainly have not done it in the future?

No.

You said that you didn't know that a man could raise a color on the premises claimed by Mr. Raunheim. If you never did any prospecting there or examined the ground how are you able to state that?

105 I never saw any one else raise a color.

That is the reason you state that?

Yes.

You have never seen any colors raised there?

No; I never seen anybody do anything in the way of placer mining there in that portion of the country.

That's all.

Mr. DE WITT: What about the ownership of the Betsy Dahl claim?

I am the owner of it. I have been in possession of it since I located it.

Have you ever parted with the title of it from the time you located it until now?

I have owned, with the exception of once I deeded part of it to Gamer and received it back again.

At the commencement of this action, on June 17, 1882, who owned it?

I did.

That is all.

WILLIAM STEVENS called and sworn for defendant, and testified as follows:

106 Examined by Mr. DE WITT:

Do you know the defendant, H. C. Dahl?

Yes, sir.

Do you know the ground known as the Betsy Dahl claim?

Yes, sir.

What is your occupation?

Well, I am a miner. I do a little of everything. I am a miner and prospector.

How long have you been mining?

Since '76.

Are you familiar with the ground out there?

Well, partially so; I have done some work on the ground below it.
Have you ever done any assaying?
Yes, sir.
Did you ever assay any quartz from the Betsy Dahl claim?
Yes.
State how you happened to do it.
I was coming from the concentrator, and passed Dahl's place, and said to him, You have struck some pretty good looking ore.
107 I will go in with you and make an assay of it. He says, No; I own the ground and I want to locate it myself.
When was that?
Some time in '81. He says, I want to locate it myself. I says, All right; I will assay some of the rock for you; and I took some and assayed it. I was assaying some for Parks and others at the time.
How many specimens did you take?
I got 3 or 4.
What did it yield?
I think from three ounces to 12.
From 3 to 12 ounces?
Yes, sir.
What?
Silver.
Anything else?
I didn't assay for anything else.
Did you say you worked on that ground?
No; I worked below it about 800 feet.
Have you ever done any placer mining?
No, sir; I sunk a hole while at the old concentrator and panned it out.
Where was that?
108 On the south side of the claim, about 800 feet due south; it is outside of this ground.
Are you are a placer miner?
I have done a little of it—very little.
Had any experience?
Not any great experience. I have mined some.
What do you say as to the character of the ground here, as to whether or not it is placer ground?
I don't know anything about that. I don't know that I ever panned a pan of dirt there.
Can you form any opinion as to the make-up of the ground?
No, sir; I never saw anything except these two shafts under ground.
Did you make any examination of the vein?
Yes; when I went in I said it looked like pretty good copper blossom.
Where did you observe the vein?
I think it was 12 or 13 feet deep.
That was in 1881?
109 Some time in 1881. I don't remember dates. I took the

rock home and assayed it, and Dahl wanted me to write out a location notice for him, which I did, and put it up.

Did you make any examination of the lead?

I went past there twice every day. I noticed what they were doing, was all. I never had any particular interest in it, since I didn't get in it.

Your interest ceased then?

Yes, sir.

That's all.

Cross-examined by Mr. DE WOLFE:

You say you took two or three samples and assayed them?

Yes, sir.

Have you had experience in assaying?

I have done considerable of it.

Can you assay rock correctly for silver?

Yes, sir.

What experience have you had?

I have been assaying for the last ten years. I have always done my own assaying when working in the mines.

Where did you get that rock from?

110 Some of it I got out of the shaft, and, I think, one or two pieces from the dump.

Did you get the rock yourself?

Yes, sir.

It wasn't given to you by anybody?

No, sir.

Some of it you got out of the dump?

Yes, sir.

Which shaft was that? There are two shafts there.

It was the one on the south side—a little southwest of the corner of the house; that's the shaft I went in.

Did you see more than one shaft at the time?

They had a well, I believe, on the other side of the house. I think that is all I saw.

Now, are you positive about the assay showing from 3 to 12 ounces of silver?

Yes; I am positive; it went somewhere between 3 and 12 ounces.

You don't know how many assays you made?

From 3 to 4.

Did they all assay something in silver?

Yes, sir.

And from 3 to 12 ounces?

111 Yes; as near as I remember.

Are you positive of that?

Yes, sir.

That is all.

JAMES TUEY called and sworn for the defendant, and testified as follows:

Examined by Mr. DE WITT:

Where do you reside?
Down here on the creek.
What is your business?
Well, different things. I mine as long as there is anything to pay. I am hauling wood now.
How long have you been here?
I am here since '66.
Here in the neighborhood?
Yes.
Have you done any mining?
Yes, sir; I have. I have prospected about 10 miles square around Butte.
Did you ever do any placer mining?
Oh, yes.
How much experience have you had?
112 I have had experience in California and Idaho and all over the country.
How many years?
My conscience! 25 years, sir.
In placer mining?
Yes, yes; I worked some good ground in Hangtown, California.
Do you know where the Betsy Dahl lode is?
No, sir.
Know where the Montana Copper Co.'s works are?
Yes; I do.
I will ask Mr. Harper to indicate on this map where it is?
Mr. HARPER: I can't do it exactly.
Well, approximately?
Well, it is about there.
That wouldn't be far from right?
No, sir.
How far is that from here?
About 800 feet.
Now, Mr. Tuey, you know where the Montana Copper Co.'s works are?
Yes, sir; I do.
Did you ever do any placer prospecting there?
I prospected there, but there is no mine there. I have pros-
113 pected up to the forks of Silver Bow and BlackTail. That's about 3 miles. I prospected some holes about 20 feet deep, but didn't find any mineral.
Here let this represent the Montana Copper Co.'s works, and that the Silver Bow creek, can you say where you prospected in this locality?
I think I sunk holes there that are there yet. The stuff that came out of them is there.
Well, what did you see?
Well, the man that goes there looking for placer-mining ground has slept too long. It is pretty scarce there now.

Did you find any colors there at all?
No, sir. Up at Dixie we had some light colors.
That is up some distance?
It is up a great way.
Did you get any colors around here at all?
No, sir.
Did you prospect that ground?
Yes; I did.
Prospected by panning? About how deep did you go?
About 20 feet.

114 If there had been any placer-mining ground there would you have found it?

It can't be. If there was gold around there I would have had my share of it. We all lived around here and prospected anywhere. Take sec. 19, there is about 200 acres there, and that ground has all been prospected and nothing has been found.

Is the character of all this ground about the same?
Yes.
As to the character of ground there, what is it?
Well, it is wash.
Did you get to bed-rock there?
Yes; I sunk some holes out at race-track.
You are getting a little too far off. Did you go to bed-rock here?
Yes.
Find anything?
No, sir.
Are you familiar with the kinds of ground placer mines are found in?

Well, gold is where you find it, take it through the world; but, as far as I prospected here, I got no mineral.

Is it of a mineral character?

115 No; it is too loose. Its a wash from the hills, shook up, with a mixture of all kinds.

That is all.

Cross-examined by Mr. DE WOLFE:

I understand you prospected through here?
I did, sir, for 3 miles.
From the junction of Black Tail and Silver Bow creeks?
I didn't say that. From Independence district to Summit Valley district.
You prospected all the way up?
Yes, sir.
This would be the east side of the creek?
Yes, sir.
Have you done any prospecting here?
I didn't cross the creek at all.
All your prospecting was over here?
Yes; in the Summit Valley mining district.
Is this the Summit Valley mining district?

Yes.

On this side of the creek?

Well, that would be a new district. If we found mineral there we would have had to make a new district.

116 How do you know this is not in Summit Valley mining district?

Well, it don't cross the creek.

How do you know?

I have been there.

Did you ever attend a meeting of miners?

I have, sir.

You know the boundaries of Summit Valley mining district as bounded by Silver Bow creek?

Yes, sir.

You know that by the action of the miners?

Yes.

You never done any prospecting on the other side of Silver Bow creek?

No, sir.

Have you ever examined the ground over there?

Yes; I seen people sinking several holes; it was just wash, though.

Over here?

Yes; the work is there yet, not far from your place; there is 2 holes there.

On the other side of the creek?

Yes; they was looking for the line of the Calusa lode; that's the way they come to be sinking. The work was done on the

117 east side; they thought from the pitch of the lead it would come south, and they sunk here.

Sunk some holes?

Yes, sir; and had a windlass, too. I could tell where the holes are if I was down there.

Was that between the creek and the work of the Montana Copper Co?

No; it was outside of that ground.

On the other side?

Yes.

These holes were sunk to discover the Colusa lode?

Either that or the Gambetta; they was sinking for that purpose.

Now, you say you have worked at different places?

I have, sir.

On this side of the creek all the way down to Independence district?

Yes; down to Rocker, and never found placer ground; no, sir.

Can you tell me this, whether along here anywhere they found any traces or color existing showing the existence of placer ground?

No, sir; there where Haffey lived was a trace of quartz.

I am speaking about placer.

118 Well, I can go on the ranches in Deer Lodge Valley and

get colors. From German gulch down it is possible to get colors.
Yes; on the best ranches you can.
You spoke of Dixie. What direction is that from here?
Kind of northeast. It is up by the Clipper mill.
Have you ever done mining there?
I have, sir.
Placer mining?
Nothing further than sinking a hole.
Did you find any trace of mineral up there?
Nothing that would justify me to put in sluices.
Did you find anything?
I got a little color or two, but it would take a great many of them to make a cent.
You did find colors?
Yes; that kind, all over Yankee Doodle and Dixie.
The water from there all flows through Silver Bow creek?
Yes.
Are you a placer miner of long experience?
I am, sir.

119 Now, I will ask you if gold, if placer ground, exists up there at the head of Yankee Doodle and Dixie gulches, or whatever they are called, would not the action of the water naturally carry down some gold through here?

I don't know that it would—I don't know that it would. I have worked ground with no outlet or inlet with gold in it.
You say you found slight traces of mineral up here?
Yes.
Well, how far below here at other points have you found mineral?
Well, down at the forks of the gulches, up towards Dixie and Yankee Doodle, and Hail Columbia I found more.
Where did you find any more?
Not until I got to the forks of Dixie, about three hundred miles, or three miles from there.
You didn't find anything from Dixie to Silver Bow?
No; not for 3 miles.
Now, all the work and prospecting you ever done was on this side of the creek?
Yes.
That is all.

120 Mr. De Witt: You spoke of some holes sunk over here to trace the Calusa lode. Did you examine them?

I did, sir; and washed it out. No; I thought you meant the holes on Silver Bow creek; no, sir; I didn't.
I mean where Peter Gale prospected?
No, sir; I didn't.
What is the character of the ground over here in regard to its placer-mining qualities?
Its just a wash or slide. I sunk 10 or 12 feet there and got a green copper float.

Would the character of the ground on the east side of the creek indicate placer-mining ground?

I don't think it would, sir. I saw Mr. Lavelle cutting 75 tons of hay down here, and I think the land is better for agriculture than for placer.

That's all.

Mr. DE WOLFE: There is good pasture all around here?

Yes.

Down at the junction of Silver Bow creek and Rocker, is that placer ground?

Yes; down at Rocker and Silver Bow.

I will ask you whether those bottoms don't produce good grass?

Well, if it is flat you might raise some.

121 Don't grass grow on the surface there?

Yes.

Grass may grow on the surface and yet that is no indication that it is not placer ground?

The ground is covered generally with grass and willows.

That's all.

HENRY MEAGHER called and sworn for defendant, and testified as follows:

Examined by Mr. DE WITT:

Are you familiar with the ground in controversy?

I have lived there and been over the ground.

Map shown witness.

What is your business?

I have been mining 20 years.

Placer?

Placer & quartz, both.

Have you done any placer mining in this district?

No; I never mined for placer here at all.

Are you familiar with this ground?

Well, I have been over the ground a good deal.

Do you know anything about the mineral character of this ground?

122 No, sir.

Ever examined it?

I have been over the ground, but never examined it particularly. I didn't examine it enough to tell whether it is placer-mining ground or not.

That is all.

Cross-examined by Mr. DE WOLFE:

Have you been over the ground frequently?

Yes; I lived there and prospected it for quartz. I lived on the other side of the creek from the Montana Copper Co.'s works, a little north of west. I lived on the Mat lode.

Did you ever find anything on the ground?
No, sir; I never did.
That's all.

G. O. HUMPHREYS called and sworn for defendant, and testified as follows:

Examined by Mr. DE WITT:

Where do you reside?
In Butte City.
How long have you lived here?
20 years.
123 What is your occupation?
I am particularly engaged in mining.
Have you done any placer mining?
I have. I don't now.
How much experience have you had in placer mining?
Well, I have been picking about here about 30 years, in this district—in this district about 20 years.
Are you familiar with the general geography of this neighborhood?
Well, yes; I know it pretty well.
Do you know where the Montana Copper Co.'s works are?
I have been there.
Do you know where the Betsy Dahl claim is?
Yes, sir; I do.
Do you get the geography of the country from this map? This is the Copper Co.'s business. Here is the Dahl claim.
Yes.
Have you done anything in the way of placer mining or getting water in there?
124 I think I have done considerable.
What?
I turned the first water that ever run from the Atlantic coast to the Pacific, and brought it into Butte City.
Have you been on this ground?
I have. I looked at it.
Do you think from its character this is placer-mining ground?
I don't think there is any placer ground there.
Did you ever examine it?
I did, at one particular place, and I didn't find what I was looking for.
What were you looking for?
For placer diggings of gold in the ground that would pay to work. We all put in a little to sink a shaft there. I put in my portion. That is below this claim, where Harrington's house is.
From your experience as a placer miner and your knowledge of this ground, what do you say as to the character of the ground here, whether or not it is placer mining ground?
125 I am sorry to tell you, I don't think it is placer ground.

I was trying to make it placer-mining ground but couldn't do it. It would have been to my interest to make it placer ground.

That's all. No cross-examination.

ROB'T YEDDELL called and sworn for the def't, and testified as follows:

Examined by Mr. DE WITT:

Where do you reside?
Butte City.
What is your business?
Mining.
Ever done any placer mining?
A little.
About how much?
Well, I have done some placer prospecting.
Do you know where the ground in controversy is?
Yes.
Have you ever been on the Betsy Dahl claim?
I have.
Did you ever prospect or investigate this ground about a thousand feet south of the *of the* Montana Copper Co.'s works to
126 ascertain whether it is placer-mining ground or not?
No, sir; I never did prospect that.
Did you ever prospect on the ground?
I have been on the east prospecting for quartz. I never thought it was placer ground. I have looked for quartz there.
What do you say it is?
I wouldn't say it is placer ground.
What is the formation?
It is a kind of a wash or decomposed bed-rock.

That's all.

Cross-examined by Mr. DE WOLFE:

You say you are acquainted with the location of the Betsy Dahl claim?
Yes, sir.
Have you been all over it?
I think I have.
Have you ever been at the discovery shaft?
Yes, sir.
Whereabouts on the claim is it?
On the west end.
Which side of Silver Bow creek?
On the west side.
127 Did you ever go down the shaft?
No, sir.
Did you ever examine the quality of that ground?
I have seen quartz there on the dump.
On the Betsy Dahl claim?

Yes, sir.
Did you ever see any outcroppings there anywhere?
I saw some float on the surface.
You didn't see any croppings?
Not what I call croppings; croppings is what sticks out of the ground on the surface.
How far is that shaft from the Silver Bow creek?
I never measured it.
Is it one or 2 or 3 hundred feet?
It is 100 feet, anyway.
Which is the lower, the discovery shaft or the creek?
The creek is the lowest, of course.
How much lower?
I don't know.
You saw nothing on the surface to indicate a lead?
No, sir; I saw quartz on the dump.
When did you examine that?
In 1881.
Have you been there since?
128 I have passed there.
Did you make any examination?
No, sir.
You have seen no rock you would call quartz since 1881?
I have seen it when I went by there.
That is all.

Mr. De Witt: You saw that lying scattered around?
Yes.
Would that indicate the existence of a lead?
Well, I should judge it would, from my experience in prospecting. If I was looking for a lead I would sink a hole there.
That's all.

Thomas C. Porter called and sworn for defendant, and testified as follows:

Examined by Mr. De Witt:

You live here in Butte?
Yes, sir.
How long?
20 years next October.
Prior to two years ago what was your business?
Mining.
Are you mining now?
Yes, sir; I am.
129 Have you had some experience in placer mines?
Yes, sir.
About how many years?
Since 1859.
Does that map give you any idea of ground you are familiar with?
Yes; I know the Gambetta and Calusa.

Do you know where the Betsy Dahl claim is?
Yes, sir.
Are you familiar with this ground east of the creek?
Yes, sir.
Did you ever examine that ground as to its character as placer mining ground?
Very little; I sunk a shaft there in 1868.
What did you find?
Nothing.
Did you find placer-mining ground?
No, sir.
Find colors?
No, sir.
Where did you sink that shaft?
Well, I can't tell now. I might be on this ground and it might be north; it might be northeast of the creek.
And it might be just east of it here?
130 Yes, sir; it might be.
From your knowledge of placer mining and your knowledge of that ground, what do you say as to the character of this ground?
Well, really I know nothing about it, except just on the surface.
Well, that is what I mean.
Yes; I do.
You sunk a shaft there?
No; east of the creek.
Well, now, from your experience of mining and your knowledge of this ground, what is your best knowledge or information as to the character of the ground?

Mr. De Wolfe: I object.
The Court: He may be asked the question.

Mr. De Witt: What is your opinion as to that?
I am familiar with the surface ground there. I lived on the ground 16 years ago.
Well, from your knowledge, what do you say as to its mineral character?
I never saw anything there west or east of Silver Bow creek that would indicate placer ground worthy of location.

That is all.
No cross-examination.
131 Court adjourned until 2 o'clock.

At two o'clock court called.

Defendant rests.

David Upton called and sworn for the plaintiff in rebuttal, and testified as follows:

Examined by Mr. De Wolfe:

Where do you reside?

In Butte.

How long have you lived here?

Since 1866. I came here in 1866.

What has been your business?

Well, placer mining mostly since '66.

Whereabouts in this vicinity have you worked at placer mining?

Just below the town of Butte.

Was this map shown to you yesterday?

I think it was.

Do you know where the Betsy Dahl lode claim is?

I know pretty near; it adjoins the claim I located, called the Piccalo.

Have you ever done any mining anywhere in that vicinity?

No, sir.

132 Do you know whether any placer mining has been done there?

Yes; some cuts have been run there. I saw the cuts and holes there.

Do you know whether that ground is regarded as placer-mining ground or not?

Well, all I know is from the appearance. It has been located as placer-mining ground.

It has been?

Yes; I think the whole creek has been.

Has there been any placer mining done there?

Where the two creeks, Yankee Doodle and Silver Bow, come together, there has.

DE WITT: I object to that. It is a mile below this ground.

The COURT: It may go to the jury for what it is worth.

DE WOLFE: Now, has there been any placer mining done above the Montana Copper Co.'s works?

Yes.

How far above?

Well, about a mile, or not that far.

Do you know whether gold has been taken out?

Yes; there has been.

Now, how far below this claim has placer mining been done?

133 Well, in the creek I don't think there has anything been done until you get down to where Black Tail puts in.

About how far below is that?

Well, it is over a mile.

Do you know anything about the depth of bed-rock along Silver Bow creek?

No, sir; I do not. I have never seen any place where they get bed-rock.

Has there been holes sunk to any depth along the bed of the creek?

Well, there have been holes sunk 10 feet deep.

And never reached bed-rock?

No, sir; not that I know of.

Now, from your experience as a placer miner, where is the deposit of gold ordinarily found?

On bed-rock.

Then, is it necessary ordinarily, to do proper placer mining, to go to bed-rock in order to prospect the claim?

I think it is.

And you don't think there has been any shaft sunk to bed-rock there?

No, sir.

That is all.

134 Cross-examined by Mr. DE WITT:

For over a mile above this ground and a mile below there has never been any placer mining done?

I don't think there has. There has been some holes sunk, and for a distance of two miles there nobody has done any profitable mining. No, sir; I don't think there was.

That is all.

JOSEPH RAMSDELL called and sworn for plaintiff in rebuttal, and testified as follows:

Examined by Mr. DE WOLFE:

Where do you reside?

In Butte City.

How long have you lived here?

Well, I have lived here most all the time since '66.

What has been your business?

I have been mining for the last 8 or 10 years.

Have you been engaged in placer mining?

I was in early times—in '66 and '67.

Where was that?

Right down here, this side of the Dexter mill.

Do you know where the works of the Montana Copper — are?

135 Yes, sir.

What creek runs by there?

Silver Bow creek.

Do you know, in regard to the character of the ground there, whether it is placer ground or not?

Well, sir; I can't tell you whether there is pay or not. I know that, in early times, the boys used to work up there. I can't say as to what they got.

Do you know whether it has been located as placer ground or not?

DE WITT: I object to that as not being the best evidence.

DE WOLFE: I think the objection is good. You know that work has been done there?

Yes, sir.

You never worked there yourself?

No, sir; I never did.
You never saw any work being done there?
Yes; I have seen men shoveling in sluices. I hauled some boxes for a man up there.
Do you know where he was working?
Yes; I guess I could go pretty near the place now; it is this side of the copper works.
On this side or the other side of the creek?
136 He worked on both sides of the creek, below the Copper Co.'s works.
How far below?
Well, I won't say now; it is not a great way; just a little this side of where the bridge crosses.
How far below?
Well, probably 3 or 400 yards. That was in 1867. He had some holes sunk there, and I hauled him up three sluice-boxes.
He was placer mining?
Yes; he was going to. After that, when I was driving my cattle, I seen him shoveling in.
Above that did you see any placer mining there?
I don't think I ever did any myself.
You don't know whether any gold was taken out above or not?
No; I can't say as to that.

Cross-examined by Mr. De Witt:

From a point, say, half a mile below the Montana Copper Co.'s works to a half a mile above, do you know of any profitable placer work being done?
No, sir. I know they mined, but I don't know as to the profit.
You don't know?
137 No, sir.
That's all.

A. M. Westlake called and sworn for plaintiff in rebuttal, and testified as follows:

Examined by Mr. De Wolfe:

Where do you reside?
I live now between Silver Bow and Butte.
Did you ever live out at Meaderville?
Yes, sir.
When?
About 3 years ago.
Do you know where the claim called the Betsy Dahl is located?
Yes, sir.
Have you been on the premises?
Yes, sir.
Have you been at the shaft sunk on the claim?
Yes.
When?
About 3 years ago.

Have you ever done any mining yourself?
Yes, sir.
How long have you mined?
Since I was about 8 or 10 years old.
138 Did you examine the shaft sunk upon that mine with reference to whether there was a lead discovered in the shaft or not or whether there was a lead developed there?
Yes; I seen whether it was a lead or not.
Well, what did you find there?
I found granite and sand.
Did you see anything like a lead there?
No, sir.
How deep was the shaft sunk when you went in?
I guess 25 feet.
Were they working?
Yes, sir.
Who?
Mr. Dahl and two other men. I forget their names now.
Did you see any ore in there?
No, sir.
Did you see any wall rock or ledge?
I saw granite.
Was the wall formation granite in the shaft?
Well, on the north side was granite and on the south side was sand.
You saw nothing there you could call mineral?
139 No, sir.

That is all.

Cross-examined by Mr. DE WITT:

Where were you living there—on what ground?
I can't tell you what ground it was.
Did you own the ground?
No, sir.
Who did?
Jacobs.
What Jacobs?
I can't tell you any more.
What is his business?
I believe he was peddling around town here.
He owned the ground?
He owned the house I lived in.
Who owned the ground?
I can't tell you who claimed it.
Didn't you own a house of your own out there?
I had a small place there.
Built it yourself?
Yes.
On whose ground?
I can't tell you; it belonged to the Government.

140 Didn't you have an agreement with some one out there that you should build on the ground?
No, sir.
Didn't have an agreement as to the title?
No, sir.
You just squatted on it?
Yes.
Wasn't that ground claimed by Raunheim or the Montana Copper Co.?
No, sir.
Are you sure of that?
Yes.
What house was that?

DE WOLFE: I object. This is not cross-examination, and it is immaterial.

Mr. DE WITT: It is cross-examination to find out the interest of the witness.

The COURT: You can ask him if he is interested.

Mr. DE WITT: Your were keeping a boarding-house there?
Yes, sir.
What was it called?
The Westlake House.
Is that the one you built?
No, sir.
141 Which did you build?
A little frame house to the north.
Since you built it hav-n't you found out who claimed the ground?
No, sir.
In investigating this lead of Dahl's did you make an assay of what you found?
No.
Didn't you offer to do certain work on the ground for a half interest?
No, sir.
You say that is all granite in the shaft?
All I saw was granite and sand.
Did you see any ore?
No, sir.
Didn't undertake to assay any of it?
No.
Where have you quartz-mined?
In the old country; likewise in Lake Superior and Nevada.
Ever do any silver-quartz mining?
Yes, sir.
Where?
Lake Superior.
142 Can you tell silver ore?
Yes.
How?
By looking at it.

How does it look?
I can tell it.
How do you tell it?
It is somewhat darker than other rock.
Dark rock bears silver and other rock don't?
Of course, light rock will carry silver too.
Light rock will too?
Yes.
How do you tell the difference?
Well, by assaying it.
That is a good way isn't it?
Yes.

That's all.

DAVID LEWIS recalled for the pl'ff in rebuttal, and testified as follows:

Examined by Mr. DE WOLFE:

In regard to the location of the Betsy Dahl claim, of the shaft on the claim, have you ever been there?
Yes, sir.
Have you examined the shaft?
143 Well, I wasn't there since they struck the granite and quartz mixed. There was seven feet of dirt on top of it, as near as I could judge.
When did you go in there?
When they commenced to sink the shaft.
When was that?
In '81.
What did you find?
Nothing; no croppings at all.
Lower down in the shaft?
I wasn't down.
Down at the depth of seven feet they found what you think was granite and quart mixed?
Yes, sir.
Was there anything like a ledge or vein?
Not then.
That was the only time you was ever in the shaft?
Yes, sir.

Cross-examined by Mr. DE WITT:

Could you see any indications of a ledge or vein there?
No, sir; I saw the granite and quartz mixed. That was seven feet below the surface.
Were you in the shaft?
I was right over the shaft, looking down.
144 How deep was the shaft?
Well, it was between 7 and 10 feet.
Little dark down there?

No; not at that depth.
What is your business now?
Smelter.
In whose employ?
Montana Copper Co.
Now?
Yes; I was then, too.
Why did you go there to look in the shaft?
Well, I wanted to see what he had there.
Of what interest was it to you?
Well, I was prospecting myself around there. I wanted a little information.
Were you sent there by Mr. Raunheim?
No, sir; I was not.
By anybody connected with the Montana Copper Co.?
No, sir; I went on my own account.
You never looked after the shaft was 7 feet deep?
No, sir.

That's all.

145 JAMES A. MURRAY called and sworn for plaintiff in rebuttal, and testified as follows:

Examined by Mr. DE WOLFE:

You live in this city?
Yes, sir.
Do you know where the claimed called the Betsy Dahl is located?
I know where there is a location called the Betsy Dahl.
Where is it?
Out here in Meaderville, a little south of the works of the Calusa Co.
Have you ever been at the point of discovery on the Detsy Dahl?
Frequently.
Have you ever examined the shaft with reference to see whether it is developed?
Yes.
How recently?
Well, a year and a half ago.
What did you find at the time?
I found a hole some distance below, and on the surface there is a lot of iron-stained granite—rotten granite.
146 Did you see any ledge or vein in the shaft?
No, sir.
Did you go in the shaft?
No, sir. There is no lead comes near the surface. I located that ground in 1879, before there was a house on it.
Do you still hold that location?
Yes; I do. I located it on the 6th of November, 1879, and made application for patent in January, '80, and some time after that Dahl came along, I believe, and wanted it for building purposes or something, and made a location.

You located it in '79, and in '80 you applied for a patent?
Yes, sir.
Was that before the location of Dahl?
A long time before.

Mr. DE WITT: I object as not proper rebuttal testimony.
The COURT: It is proper rebutting testimony. If the land was not public mineral land of the United States it was not subject to location at all.
Mr. DE WITT: We except.

147 Mr. DE WOLFE: When did you make your application for patent?

Mr. DE WITT: I object to that. It is not the best evidence of that fact.
The COURT: Objection overruled.
Exception noted.

Mr. DE WOLFE: State when you made the application.
On the 2nd day of January, 1880.
Do you know whether there was an adverse claim published by the officers of the land office?
Yes.

Mr. DE WITT: I object to that and ask an exception.

Yes; there was a notice posted 90 days.
On the claim?
Yes.
Was an adverse claim filed to your application filed?
Yes and no—both.
Did Dahl adverse your application?
No, sir.
Was any suit ever instituted against you by Dahl in regard to the claim?
No, sir.

That is all.

Cross-examined by Mr. DE WITT:

Are you a miner?
148 Well, I am a kind of a general rustler. I mine sometimes, in my mind.
This stuff you speak of being there, what is it?
Iron-stained rotten granite.
Any silver in it?
I never had it assayed.
Might there not have been silver in it and you not know it?
There might, but it was different from anything I ever saw in my life containing silver.
What interest have you in this action?
I have this much interest in it: According to your stipulation you stipulated my rights away. You fixed my rights in your stipulation.

Isn't it a fact that you and Dahl have entered into a stipulation that the judgment entered in this case shall control the case you are interested in?

Mr. DE WOLFE: I object. The stipulation is the best evidence.
The COURT: The stipulation is on file.
Mr. DE WITT: Look at it.
(Paper shown witness.)

149 I want to say this: I would never have agreed to this stipulation if I had seen it.
Your attorney saw it?
Well, I didn't.
Mr. Pemberton is your attorney?
Yes.

Mr. DE WITT: I offer this in evidence.

I am interested in this, but Pemberton stipulated this without my knowledge and I will have to abide by it. You kind of got it into me, I guess.

That's all.

Mr. DE WOLFE: I will ask leave of the court to amend the amended complaint in regard to the description of the ground. I have left out these words, "the southeast of the east."
The COURT: Is there any objection to this?
Mr. DE WITT: No, sir.
Mr. DE WOLFE: I want to insert the words "the southeast quarter of the southeast quarter."
The COURT: If there is no objection it may be done on both sides.
Mr. DE WITT: I have no objection, your honor.
Mr. DE WOLFE: The complaint reads "the east half of the southeast quarter." I want to insert the other words.

150 Mr. DE WITT: I wish we could agree to some time in which to file exceptions.

If the court please, we will agree to file all exceptions within 20 days.
The COURT: Let it be noted that counsel agree to have 20 days after the close of the trial to submit exceptions. Counsel also agree that the exceptions to instructions may be filed within 20 days.

Testimony closed.

Thereupon the court instructs the jury, and defendant files his bill of exceptions No. 3, which is as follows, to wit:

2d Judicial Dist. Court, County of Silver Bow, Montana.

SALY RAUNHEIM
vs.
HENRY C. DAHL. } Def't's Bill of Exception No. 3.

The above cause coming on for trial March 28th, 1884, one of the days of the March term, 1884, of the above court, and the evidence

and arguments of counsel being closed, and the court having instructed the jury, now, before the cause is submitted to the jury, the defendant excepts to the giving and refusal of instructions and special findings as follows:

151 To the giving of instructions numbered second and fourth, offered by plaintiff, for the reason that the same are immaterial and tend to mislead the jury; and to the refusal to give instructions numbered 2, 4, & 6, offered by defendant, for the reason that the same are material for the jury to arrive at a proper verdict and correctly state the — applicable to the case; and to the refusal of the court to submit to the jury special findings numbered 2, 3, 4, 6, & 8, offered by the defendant, for the reason that it is material and necessary for the facts therein stated to be ascertained in order that a proper judgment may be entered upon the verdict.

Special finding No. 1, offered by pl'ff, for the reason that the same calls for an answer requiring a decision of a question of law and not of fact.

Defendant asks that this his bill of exceptions be signed, which is accordingly done this 28th day of March and before the case is submitted to the jury.

WM. J. GALBRAITH,
Judge 2d Jud. Dist. Court.

Filed March 28, 1884.

R. L. DAVIS, *Clerk*,
By CHARLES S. WARREN,
Deputy Clerk.

152 SALY RAUNHEIM *vs.* H. C. DAHL. } Special Findings.

The jury, through their foreman, are requested to make special findings as to the following facts, and return the same into court with their verdict:

Was the plaintiff in either actual or constructive possession of the premises in dispute at the time of commencing this action? Given.
Ans. Yes.

L. B. MANNING, *Foreman.*

Was the defendant in either the actual or constructive possession of the premises in dispute at the time of commencing this action? Refused.

Filed March 28, 1884.

R. L. DAVIS, *Clerk*,
By CHAS. S. WARREN,
Deputy Clerk.

2d Judicial Dist. Court, County of Silver Bow, Montana.

SALY RAUNHEIM
vs.
HENRY C. DAHL. } Special Findings Requested by Defendant.

In the above case the jury will find upon the following questions of fact, and answer as matters of fact, as declared by the evi-
153 dence in the case, the following questions, and sign the answer by your foreman:

1. Was the ground claimed by the plaintiff proved by the evidence to be placer-mining ground at the time of the alleged location by plaintiff's grantors?
Ans. Yes.

L. E. MANNING, *Foreman.*

2. Is the ground claimed by the plaintiff now, or has it any time been, of any value for placer-mining purposes? Refused.

3. Did the plaintiff or his grantors or any of them ever make a discovery of any valuable deposits on the ground claimed by the plaintiff? Refused.

4. Has the plaintiff or his grantors complied with any local regulations or customs of miners in locating or holding the ground claimed by plaintiff? Refused.

5. Has the plantiff or his grantors ever had actual possession of the ground claimed by the pl'ff?
Ans. Yes.

L. E. MANNING, *Foreman.*

6. At the commencement of this action had the defendant actual possession of the Betsy Dahl quartz lode mining claim? Refused.

154 7. Was it proved by the evidence that the ground which witness Murray claimed as having been located and claimed by him was placer-mining ground?
Ans. No.

L. E. MANNING, *Foreman.*

8. Was it proved by the evidence that said Murray ever made a discovery of valuable mineral deposits on the ground which he testified he had located? Refused.

Filed March 28, 1880.

R. L. DAVIS, *Clerk,*
By C. S. WARREN,
Deputy Clerk.

2d Jud. Dist. Court, County of Silver Bow, Montana.

SALY RAUNHEIM, Pl'ff,
vs.
HENRY C. DAHL. } Instructions Requested by Defendant.

1. If the jury find from the evidence that at the commencement of

his action the plaintiff had not possession of the ground in controversy they will find for the defendant. Given.

2. Possession of mining ground is either actual or constructive. Constructive possession arises when it is established that there are laws, rules, or regulations in force by a compliance with which
155 a claimant is entitled to hold ground. When such laws, rules, and regulations have been proved and a claimant has proved that he has complied with them he is said to have and had constructive possession. Refused.

3. If the jury find from the evidence that the ground in controversy is not placer-mining ground they will find for the defendant. Given.

4. If the jury find from the evidence that plaintiff or his grantors never made any discovery of valuable deposit on the ground in controversy they will find for defendant. Refused.

5. If the jury find from the evidence that on the 11th day of July, 1881, when plaintiff alleges he made his application for patent to the United States, the Betsy Dahl quartz claim was known to exist, and that plaintiff did not apply for said vein, as well as his placer claim, and describe said vein in his said application, then they are to consider that plaintiff waived all claim upon said Betsy Dahl quartz lode. Given.

6. In order to find for the plaintiff it is not sufficient for the jury to be satisfied from the evidence that the ground in dispute
156 was mineral land according to the returns in the United States land office, but they must find that said ground was valuable for placer-mining ground. Refused.

Filed March 28, 1884.

R. L. DAVIS, *Clerk*,
By CHARLES S. WARREN,
Deputy Clerk.

Second District Court, Silver Bow County, Montana Territory.

SALY RAUNHEIM, Plaintiff,
vs.
HENRY C. DAHL, Defendant.

Instructions Asked by Plaintiff.

First. If the jury believe from the evidence that the premises in controversy was located by the grantors and predecessors in interest of plaintiff as a placer-mining claim, in accordance with law, and they continued to hold said premises until they conveyed the same to plaintiff, and plaintiff thereafter continued to hold the same up to the time of application for patent therefor, and at the time of making said application there was no known lode or vein within the boundaries of the premises claimed by plaintiff, your verdict should be for the plaintiff. Given.

157 Second. The location of placer claims on the mineral lands of the United States after the 10th of May, 1872, when upon

surveyed lands, were required to be made, as near as practicable, with the system of public land surveys and rectangular subdivisions thereof. (Sec. 2321, Rev. Laws U. S.)

If the jury believe from the evidence that the grantors of plaintiff located the premises in controversy as a placer-mining claim according to the system of public land surveys, and that they and, after the conveyance to plaintiff, he continued in possession thereof up to the time application was made by plaintiff for patent, and no vein or lode at that time, such as is claimed by the defendant, was known to exist within the boundaries of the premises, your verdict must be for the plaintiff. Given.

Third. The location of a vein or lode claim upon or over a placer location previously made is not sufficient in itself to establish the existence of the vein or lode within the boundaries of a placer claim. The party claiming under such a location must prove to the satisfaction of the jury the existence of the vein or lode within
158 the placer boundaries, and also the fact that the existence was known at the time the placer claimant made application for patent. Given.

If the defendant in this action has failed to prove either of these facts your verdict should be for the plaintiff. Given.

Fourth. In order to make a valid location of a vein or lode claim within the boundaries of a placer claim previously located and held by any one authorized to locate and hold the same, two things are essential: First, the discovery of a vein or lode, and, second, the vein or lode located must be discovered or be known to exist before application is made for a patent by the owner of the placer claim within which the lode is discovered.

Failing in either of these particulars, the location of a lode claim within the boundaries of a placer claim previously held is void, and no rights are acquired under and by virtue of such location. If the jury believe from the evidence that the defendant in making the location of the Betsy Dahl lode claim failed to discover a lode, or if he discovered a lode, and further find that it was within the boundaries of a placer claim owned by some other person or per-
159 sons other than the plaintiff, and that application had been made for patent for the placer claim before the existence of a lode therein was known, in either of said cases the defendant acquired no right to the possession of the premises in controversy under the location made by him of the Betsy Dahl lode, and your verdict should be for the plaintiff. Given.

Fifth. It is not essential to the location of a placer-mining claim that mineral should be found before location thereof is made. If the land located has been returned by the surveyor general to the land office as mineral lands, that fixes the character of the land as such until proper proceedings are instituted in the land office to show their non-mineral character. In the present case both parties claim the land as mineral—the plaintiff under a placer location and the defendant under a vein or lode location. The application for patent would have to be in pursuance of the mineral laws of the United States, and the rights of both parties determined by those

laws. If the jury believe that the placer claim under which the plaintiff claim was located before the Betsy Dahl lode claimed
160 by defendant, their verdict must be for plaintiff, unless they further find that the vein or lode named was known to exist within the boundaries of the placer claim at the time plaintiff applied for a patent therefor, and that said vein or lode also existed and was known to exist within the boundaries of the Betsy Dahl location. Refused.

Sixth. The court instructs you that possession of mining ground, whether it be a lode or placer ground, need not be an actual possession; but if the party claiming the ground has located the premises in conformity with law, and has complied with the law regulating the possession in other respects, this compliance on the part of the claimant gives constructive possession, which is sufficient. If the jury, therefore, find from the evidence that the grantors of plaintiff located the placer claim in accordance with law, and that locators and plaintiff have since complied with all laws in relation thereto, the location of plaintiff being first in time gives to him constructive possession, and your verdict — be for plaintiff. Given.

Filed March 28, 1884.

R. L. DAVIS, *Clerk*,
By CHAS. S. WARREN,
Deputy Clerk.

161 And afterwards the jury came in and gave the following verdict:

Second Dist. Court, Silver Bow County.

SALY RAUNHEIM
vs.
HENRY C. DAHL.

"We, the jury in the above-entitled cause, find a verdict for plaintiff.

L. E. MANNING, *Foreman.*"

2d Judicial District Court, Silver Bow Co., Montana.

SALY RAUNHEIM, Pl'ff,
vs.
HENRY C. DAHL, Def't.

On the motion for a new trial in the above case the defendant will rely upon the following grounds and specifications of particulars, in which the evidence is insufficient to sustain the verdict and the verdict is contrary to the law and the evidence, and the following specifications of error in law occurring at the trial and excepted to by defendant:

1. Newly discovered evidence material to the case of de-
162 fendant, which he could not with reasonable diligence have discovered and produced at the trial, to wit, evidence that

the ground claimed by the plaintiff was and is in a regularly organized mining district, having local rules and regulations, which said evidence and the reason why it could not be obtained is set forth in the affidavits of Thomas H. Manning and defendant, filed herein the 2d day of April, 1884.

2. Insufficiency of the evidence to justify the verdict, and that the same is against the law, in this, to wit:

A. The court instructed the jury that if they find from the evidence that the ground in controversy is not placer-mining ground, they will find for the defendant; and that the evidence did not prove or tend to prove that said ground was placer-mining ground, the only evidence on said point being the testimony of the witness Marsh that said ground was returned in the U. S. land office as mineral land, and there was no evidence to support the special finding of the jury that said ground was placer-mining ground.

B. That it appeared from the evidence that when plaintiff made his alleged application for a United States patent for the
163 ground claimed by him as a placer mine there was a vein of quartz known to exist on said ground, which was afterwards duly claimed and located by defendant as the Betsy Dahl quartz claim.

C. That there was no evidence to prove or tending to prove that the ground claimed by the plaintiff as placer-mining ground was ever located or claimed or possessed as such by the plaintiff or his grantors or predecessors, or that they or either of them ever discovered any valuable deposits thereon.

D. That there was no evidence proving or tending to prove that plaintiff had actual or constructive possession of the ground by him claimed at the commencement of the action or at any other time, and there was no evidence to support the special finding of the jury in this respect; and there was no evidence to prove or tending to prove that plaintiff or his grantors ever complied with the laws of the United States, of Montana Territory, or any local rules or regulations of miners for locating or holding said ground.

E. That there was no evidence to prove or tending to prove that the ground whereon defendant made his discovery of the
164 Betsy Dahl claim was placer-mining ground.

III. Errors of law occurring at the trial and duly excepted to by the defendant, as follows:

A. In overruling def't's motion to strike out portions of the testimony of the witnesses Marsh, Raunheim, and Mantle, and the alleged deed from Marsh *et al.* to plaintiff, which said errors are fully set forth in def't's bill of exceptions No. 1, to which reference is hereby made, and the same is hereby, with said motion and the evidence upon said point, made a part of these specifications.

B. Error in overruling def't's motion for a nonsuit for each of the several reasons set forth in said motion, which said errors are fully set forth in defendant's bill of exceptions No. 2, to which reference is hereby made, and the same, with said motion and plaintiff's evidence, is hereby made a part of these specifications.

C. Error in giving and refusing instructions and special findings,

which said errors are fully set forth in defendant's bill of exceptions No. 3, to which reference is hereby made, and the same, with said instructions given and refused, are hereby made a part of these specifications.

165 It is hereby stipulated and agreed that the foregoing and within statement be, and the same hereby is, deemed settled, and shall be the statement upon motion for a new trial in the within-entitled case.

June 26, 1884.

S. DE WOLFE, *Att'y for Plaintiff.*
RANDOLPH & DE WITT,
Att'ys for Defendant.

SALY RAUNHEIM
vs.
HENRY C. DAHL. } Decree.

This cause coming regularly on to be heard on the 27th day of March, 1884, on the complaint and answer herein, and a jury being called and impanelled to try the issues of fact raised by the pleadings, and also to make and return, through their foreman, special findings of fact on certain questions submitted to them by the court; and the jury, after hearing the evidence, the arguments of counsel, and receiving the instructions of the court, retired to consider of their verdict, and subsequently returned into court and rendered a general verdict in favor of the plaintiff, and also, in their

166 special findings on the question submitted to them, found in favor of plaintiff; and the court having considered the same and being satisfied with the general verdict and the special findings of fact made by the jury in said cause, it is now thereupon ordered, adjudged, and decreed that the plaintiff, Saly Raunheim, have judgment, as prayed for in his complaint herein, against the defendant, Henry C. Dahl; that said plaintiff be, and he is hereby, adjudged and decreed to be the owner of and entitled to the possession of the premises described in the complaint as part of the Betsy Dahl lode, and hereafter more particularly described by metes and bounds; that plaintiff's title thereto and to every part thereof and his possession and right to the possession thereof is hereby adjudged to be quieted as against any claim or assertion of right or title thereto by defendant or any person or persons claiming or to claim the same by, through, or under him. Said premises are bounded and described as follows, to wit:

Beginning at corner No. one (1) of the Betsy Dahl lode as surveyed for patent, from which the quarter-section corner on the south

167 boundary of section eight (8), township three (3) north, range seven (7) west, bears south 26° 15′ east, six hundred and eighty-six (686) feet distant, and running from said corner No. one north 9° 45′ west five hundred and fifty-five (555) feet to the northeast corner of the Betsy Dahl claim; thence south 89° 45′ west two hundred and sixty-three (263) feet; thence south five hundred and forty-eight (548) feet; thence north 89° 45′ east three hundred and fifty-

seven (357) feet to the place of beginning, containing three and ninety one-hundredths acres of land, more or less (3.90).

It is further ordered, adjudged, and decreed that plaintiff do have and recover from defendant, Henry C. Dahl, his (plaintiff's) costs and disbursements incurred in this action, amounting to the sum of seventy-seven & $\frac{50}{100}$ dollars.

WM. J. GALBRAITH, *Judge.*

Filed March 31, 1884.

R. L. DAVIS, *Clerk,*
By CHAS. S. WARREN,
Deputy Clerk.

168 TERRITORY OF MONTANA, *County of Silver Bow:*

THOMAS H. MANNING, being duly sworn, says:

"I live at Butte, Montana, and have lived near Butte and in the immediate neighborhood thereof from November, 1865, to November, 1869, and from October, 1875, to the date hereof. I am very familiar with the Summit Valley mining district and the neighborhood thereof, and have been an assayer in said neighborhood during residence aforesaid. I know where the works of the Montana Copper Company and the ground in dispute are, and have been familiar with said ground for many years. I know the ground east of Silver Bow creek, near said ground and on the same. In May or June, 1866, a mining district was duly organized and called the Sullivan district, which said district embraced the ground in dispute; that the recorder of said district was L. A. Hinchman, who has left Montana, and the last I knew of him he was in Michigan, and he had the books of the district; that said district has never been disorganized; that I was one of the owners in the ground in said district; that said district included the ground east of
169 Silver Bow creek and extending to the second line rock to the east; that said district was duly organized. Officers were elected in 1866 and the boundaries were defined as aforesaid."

THOMAS H. MANNING.

Subscribed and sworn to before me this 1st day of April, 1884.
WILLIAM H. DE WITT,
Notary Public.

TERRITORY OF MONTANA, *County of Silver Bow:*

HENRY C. DAHL, being duly sworn, says:

"I am defendant in the above-entitled case. I have read the foregoing affidavit of Thos. H. Manning. I found out the facts set forth in said affidavit only on April 1, 1884, and did not know anything about them at the time of the trial of said action."

HENRY C. DAHL.

Subscribed and sworn to before me this 1st day of April, 1884.
WILLIAM H. DE WITT,
Notary Public.

Due service of the foregoing affidavits on me the 2nd day of April, 1884, is admitted and copy waived.

170 S. DE WOLFE,
Plaintiff's Attorney.

Filed April 2, 1884.

R. L. DAVIS, *Clerk*,
By CHAS. S. WARREN,
Deputy Clerk.

Second Judicial Dist. Court, County of Silver Bow, Montana Territory.

SALY RAUNHEIM, Pl'ff,
vs.
HENRY C. DAHL, Def't.

To Stephen De Wolfe, Esq., plaintiff's attorney, and the clerk of the above court:

Please take notice that the defendant in the above-entitled cause intends to move the court to vacate and set aside the verdict of the jury in the above cause and the judgment therein entered in favor of plaintiff and against the defendant, and to grant a new trial therein, on the following grounds, to wit:

1. Newly discovered evidence material to the defendant, which he could not, with reasonable diligence, have discovered and produced at the trial, to wit, evidence that the ground claimed by the plaintiff was and is in a regularly organized mining district,
171 having local rules and regulations. This evidence is set forth in the affidavits of Thomas H. Manning and Henry C. Dahl, filed the 2nd day of April, 1884.

2. Insufficiency of the evidence to justify the verdict, and that the verdict was against the law, in this, to wit:

A. That the court instructed the jury that if they find from the evidence that the ground in controversy is not placer-mining ground, they will find for the defendant, and the evidence did not prove or tend to prove that said ground was placer-mining ground.

B. That it appeared from the evidence that when plaintiff made his alleged application for a United States patent for the ground claimed by him there was a vein of quartz known to exist on the ground, which was afterwards located and claimed by plaintiff as the Betsy Dahl quartz claim and in controversy in this action.

C. That there was no evidence to prove or tending to prove that the ground claimed by plaintiff as placer-mining ground was ever located or claimed or possessed as such by the plaintiff or his grantors or predecessors in interest, or that either of them ever dis-
172 covered any valuable deposits thereon.

D. That there was no evidence to prove or tending to prove that the plaintiff had actual or constructive possession of the ground by him claimed at the commencement of the action or at any other time, and there was no evidence to support the special finding of the jury in this respect, and there was no evidence to prove or

tending to prove that the plaintiff or his grantors ever complied with the laws of the United States, the Territory of Montana, or any local rules or regulations of miners for locating or holding said ground.

E. That there was no evidence to prove or tending to prove that the ground whereon defendant made his discovery of the Betsy Dahl claim was placer-mining ground.

3. Errors of law occurring at the trial and duly excepted to by defendant as follows, to wit:

A. In overruling defendant's motion to strike out portions of the testimony of witnesses Marsh, Raunheim, and Mantle, and the alleged deed from said Marsh *et al.* to plaintiff, which said errors are fully set forth in defendant's bill of exceptions No. 1, which, with said motion and the evidence on said point, are hereby
173 referred to and made a part of this motion.

B. Error in overruling defendant's motion for a nonsuit, for the several reasons set forth in said motion, which said errors are fully set forth in defendant's bill of exceptions No. 2, which, with said motion and said bill of exceptions and plaintiff's evidence, are hereby referred to and made a part of this motion.

C. Error in giving and refusing instructions and special findings, which errors are fully set forth in defendant's bill of exceptions No. 3, which, with said instructions, are hereby referred to and made a part of this motion.

This motion for a new trial will be made upon the affidavits of Thomas H. Manning and Henry C. Dahl, filed in said cause April 2, 1884, and defendant's bills of exception 1, 2, & 3, and upon a statement of the case to be settled.

Respectfully, RANDOLPH & DE WITT,
Att'ys for Defendant.

Due service of the foregoing motion on the 2nd day of April, 1884, is hereby admitted & copy waived.

S. DE WOLEE,
Pl'ff's Attorney.

174 Filed April 2, 1884.

R. L. DAVIS, *Clerk*,
By CHAS. S. WARREN,
Deputy Clerk.

In the above court, on the 6th day of April, appear the following proceedings:

SALY RAUNHEIM, Pl'ff,
vs.
HENRY C. DAHL, Def't. } No. 302.

On motion for a new trial, motion overruled.

Second Judicial District Court in and for the County of Silver Bow.

SALY RAUNHEIM, Pl'ff,
vs.
HENRY C. DAHL, Def't.

To Stephen De Wolfe, Esq., att'y for plaintiff.

SIR: Please take notice that the defendant in the above-entitled action hereby appeals to the supreme court of Montana Territory from the judgment made and entered in said action in the said district court on the 27th day of March, 1884, in favor of the plaintiff and against the defendant and from the whole thereof, and
175 also from an order made and entered in said action on the 6th day of April, 1885, denying motion for a new trial therein.

WILLIAM H. DE WITT,
Att'y for Def't.

Filed April 18, 1885.

R. L. DAVIS, *Clerk*,
By CHAS. S. WARREN,
Deputy Clerk.

Due and timely service of the within notice of appeal is hereby admitted.

Dated April 18, 1885.

S. DE WOLFE,
Pl'ff's Att'y.

Second Judicial Dist. Court in & for the County of Silver Bow.

SALY RAUNHEIM, Pl'ff,
vs.
HENRY C. DAHL, Def't.

Whereas the defendant in the above-entitled action has appealed to the supreme court of Montana Territory from a judgment made and entered in said action in the said district court in favor of the plaintiff and against the said defendant on the 27th day of March,
1884, and awarding seventy-seven $\frac{5\,0}{1\,0\,0}$ dollars costs to the
176 said plaintiff and against said defendant, and also from an order denying a new trial therein, which said order was made and entered on the 6th day of April, 1885: Now, therefore, in consideration of the premises and of such appeal, we, the undersigned, David Gamer and Adolph Speckart, residents of the county of Silver Bow, Montana Territory, do hereby, jointly and severally, undertake and promise, on the part of the appellant, that the said appellant will pay all damages and costs which may be awarded against him on the said appeal, or on a dismissal thereof, not exceeding the sum of

three hundred dollars, to which amount we acknowledge ourselves, jointly and severally, bound.

Dated April 28, 1885.

DANIEL GAMER. [L. S.]
ADOLPH SPECKART. [L. S.]

In presence of—
WILLIAM H. DE WITT.

TERRITORY OF MONTANA, } ss:
County of Silver Bow, }

Daniel Gamer and Adolph Speckart, the persons described in and who executed the above undertaking, being duly sworn, each for himself says that he is a resident of said county and Territory, and is worth the sum of three hundred dollars, the sum speci-
177 fied in said undertaking, over and above all his just debts and liabilities, exclusive of property exempt from execution.

DANIEL GAMER.
ADOLPH SPECKART.

Subscribed & sworn to before me this 18th day of April, 1885.

W. O. SPEER,
Notary Public.

Filed April 18, 1885.

R. L. DAVIS, *Clerk,*
By CHAS. S. WARREN,
Deputy Clerk.

Second Judicial Dist. Court in & for the County of Silver Bow.

SALY RAUNHEIM, Pl'ff, }
vs.
HENRY C. DAHL, Def't. }

Whereas the defendant in the above-entitled action has appealed to the supreme court of Montana Territory from a judgment made and entered in said action in the said district court in favor of the plaintiff and against the defendant on the 27th day of March, 1884, and awarding seventy-seven $\frac{50}{100}$ dollars costs to the said plaintiff and against said defendant, and also from an order denying a new trial therein, which said order was made and entered on the 6th day of April, 1885;

178 And whereas the appellant is desirous of staying the execution of the said judgment so appealed from:

Now, therefore, in consideration of the premises and of staying said execution, we, the undersigned, Daniel Gamer and Adolph Speckart, residents of the county of Silver Bow, Montana Territory, do hereby, jointly and severally, undertake and promise, on the part of the said appellant, and do acknowledge ourselves, jointly and severally, bound in the sum of one hundred and fifty-six dollars, being double the amount named in said judgment, that if the said

judgment appealed from or any part thereof be affirmed or the said appeal be dismissed the said appellant will pay the amount directed to be paid by the said judgment or the part of said amount as to which said judgment is affirmed, if affirmed only in part, and all damages and costs which may be awarded against the appellant upon the appeal.

Dated April 18, 1885.

DANIEL GAMER. [L. S.]
ADOLPH SPECKART. [L. S.]

In presence of—
WILLIAM H. DE WITT.

179 TERRITORY OF MONTANA, } ss:
County of Silver Bow, }

Daniel Gamer and Adolph Speckart, being duly sworn, each for himself says that he is one of the parties described in and who executed the above undertaking; that he is a resident of the said county and Territory, and is worth the sum specified in said undertaking, to wit, the sum of one hundred and fifty-five dollars, over and above all his just debts and liabilities, exclusive of property exempt from execution.

DANIEL GAMER.
ADOLPH SPECKART.

Sworn to before me this 18th day of April, 1885.

W. O. SPEER,
Notary Public, Montana Territory.

Filed April 18, 1885.

R. L. DAVIS, *Clerk,*
By CHAS. S. WARREN,
Deputy Clerk.

180 Second Jud. Dist. Court, County of Silver Bow, Montana.

SALY RAUNHEIM, Pl'ff, }
vs.
HENRY C. DAHL, Def't. }

CLERK'S OFFICE, TERRITORY OF MONTANA,
COUNTY OF SILVER BOW.

I, Reuben L. Davis, clerk of the above court, hereby certify that the foregoing transcript is a full, true, & correct copy of the original papers on file in said case in my office as ordered by the appellant.

Witness my hand and the seal of said court this first day of August, 1885.

[SEAL.]

REUBEN L. DAVIS, *Clerk,*
By CHAS. S. WARREN,
Deputy Clerk.

181 In the Supreme Court of Montana Territory. January Term, 1886.

SALY RAUNHEIM, Pl'ff & Respondent,
vs.
HENRY C. DAHL, Def't & Appellant.

This cause, coming on to be heard before this supreme court on the transcript of the record of the court below therein, was argued by counsel. Thereupon the court delivered its opinion and decision in said cause in writing as follows, to wit:

This is an action to quiet the title to a certain placer claim, situate in Silver Bow county, which the respondent (plaintiff) claims by virtue of a location made on the twenty-second day of February, 1880, and possession thereunder since that date The appellant (defendant) claims a portion of the same ground by virtue of the Betsy Dahl location, made the ninth day of March, 1881. It appears that on the sixteenth day of July, 1881, the respondent made an application for a patent to the placer ground he claimed, an- thereupon a notice of such application, in due form of law, was issued out of the proper land office by the register thereof and published for the period required by the statute. No adverse claim
182 was filed to such application. Some time subsequent to the period of publication of said notice and after the same had expired the appellant applied for a patent to the Betsy Dahl claim and published notice thereof, to which the respondent filed his adverse claim, and thereupon this action was instituted to settle and determine the rights of the parties to the possession of the ground in dispute. The appellant having failed to file an adverse claim to application of the respondent for his patent to his placer ground during the period of publication of notice, he is thereafter barred from calling in question the location of said ground. This question was much discussed at this term in the case of Talbott *vs.* King, and it is not necessary to go over the ground again.

The only remaining question arises under sec. 233 of the Revised Statutes (Rev. St. U. S., 428), whether or not at the time the respondent made his application for a patent for said placer ground any vein or lode was known to exist within the boundaries of said placer claim. This question was fairly submitted to the jury upon the evidence, under an instruction from the court which declared that if the jury found from the evidence at the time the plaintiff
183 alleges he made his application for a patent the Betsy Dahl quartz claim was known to exist, and that plaintiff did not apply for said vein or lode as well as for his placer claim, and described said vein in his application, then the jury were to consider that plaintiff waived all claim to said quartz lode or vein.

Upon this issue, under the evidence and instructions, the jury, by their general verdict, properly found for the respondent. The testimony is conclusive upon the proposition that at the time of said application no quartz vein or lode was known to exist within the

boundaries of said placer claim. The discovery shaft of the Betsy Dahl lode was not within the boundaries of the placer claim, but was two or three hundred feet outside of said boundaries, and the theory that the vein ran within said boundaries was the merest speculation without any evidence to support it. There was no indication of a lead or vein on the surface within the boundaries of the placer claim. There is no proof whatever that the respondent was in possession of a vein or lode within the boundaries of his placer application. There is no proof that any such vein or lode existed. The discovery of the Betsy Dahl lode two or three
184 hundred feet outside of such boundaries raises no presumption of the possession of a vein or lode by the respondent within the boundaries of his placer claim. If said discovery had been within said boundaries, and in pursuance thereof a lode claim had been properly located there, then the respondent, in making application for a placer patent, would have been presumed to know of the existence of such lode or vein.

Mantle *vs.* Noyes, 5 Mont., 275.

But no such presumption arises in a case where the discovery is outside of said boundaries, and there is no indication of a lode within them.

Judgment affirmed with costs.

Thereupon judgment on appeal was entered in said cause as follows, to wit:

In the Supreme Court of Montana Territory. January Term, 1886.

SALY RAUNHEIM, Respondent,
vs.
HENRY C. DAHL, Appellant.

Judgment on Appeal.

185 This cause coming on in the present term of January, 1886, of this supreme court to be heard upon the transcript of the record of the court below therein, the same was argued by counsel. Whereupon, on consideration, it is now here ordered and adjudged by this court that the judgment and decree of the court below entered in said cause on the 31st day of March, 1884, be, and the same is hereby, affirmed with cost.

And it is hereby further ordered and adjudged that said plaintiff and respondent, Saly Raunheim, recover against said defendant and appellant, Henry C. Dahl, —— dollars for his costs herein expended and have execution therefor.

9th January, 1886.

And on the 5th day of March, 1886, said appellant filed herein his undertaking on appeal as follows:

In the Supreme Court of the United States.

HENRY C. DAHL, Plaintiff in Error,
vs.
SALY RAUNHEIM, Def't in Error.

Know all men by these presents that we, C. B. Hauser and Dan. Gamer, of the county of Silver Bow, Montana Territory, are
186 held and firmly bound unto Saly Raunheim, above named, in the sum of one thousand dollars, lawful money of the United States, to be paid to the said Saly Raunheim, his executors and administrators; to which payment, well and truly to be made, we bind ourselves and our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 3d day of March, 1886.

Whereas the above-named Henry C. Dahl has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the supreme court of the Territory of Montana: Now, therefore, the consideration of this obligation is such that if the above-named Henry C. Dahl shall prosecute the writ of error aforesaid to effect and answer all damages and costs if he fail to make good his plea, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

C. B. HAUSER. [SEAL.]
DAN. GAMER. [SEAL.]

Witness:
WM. H. DE WITT.

TERRITORY OF MONTANA, } ss:
County of Silver Bow,

C. B. Hauser and Dan. Gamer, being duly sworn, each for
187 himself says that he is worth the sum of one thousand dollars over and above all his debts and liabilities and property exempt by law from execution.

C. B. HAUSER.
DAN. GAMER.

Subscribed and sworn to before me this 3rd day of March, 1886.
WILLIAM H. DE WITT,
Notary Public, Silver Bow County, Montana.

The foregoing undertaking approved and supersedeas ordered this 5th day of March, 1886.

D. S. WADE,
Chief Justice.

Affidavit of Value.

In the Supreme Court of the United States.

HENRY C. DAHL, Pl'ff in Error,
vs.
SALY RAUNHEIM, Def't in Error.

TERRITORY OF MONTANA,
County of Silver Bow, } *ss:*

Henry C. Dahl, being duly sworn, says that he is the plaintiff in error in the above-named case; that he is well acquainted with the ground and premises in controversy in the above-entitled
188 action; that said premises are very valuable as quartz mining ground, and that the amount in controversy in said action far exceeds the sum of five thousand dollars over and above and exclusive of the costs and charges of said suit.

HENRY C. DAHL.

Subscribed and sworn to before me this 18th day of January, 1886.

WILLIAM H. DE WITT,
Notary Public in and for Silver Bow County,
Montana Territory.

189 *Writ of Error.*

In the Supreme Court of the United States.

HENRY C. DAHL, Plaintiff in Error,
against
SALY RAUNHEIM.

The President of the United States to the honorable the justices of the supreme court of the Territory of Montana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of the plea which is in the said supreme court, before you, in the cause between Henry C. Dahl, defendant therein and plaintiff in error, and Saly Raunheim, plaintiff therein, a manifest error hath happened, to the great damage of the said Henry C. Dahl, plaintiff in error, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done

therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal Supreme Court, Montana Territory.

Witness Hon. Morrison R. Waite, Chief Justice of said Supreme Court, this twentieth day of January, 1886.

ISAAC R. ALDEN,
Clerk of the Supreme Court of Montana Territory.

Allowed this 20th day of Jan'y, 1886.

D. S. WADE,
Chief Justice.

[Endorsed:] Sup. Court U.S. 1886, Oct'r term. No. 352. Henry C. Dahl, pl'ff in error, *vs.* Sally Raunheim. Writ of error.

[Stamped:] Office Supreme Court U. S. Filed Sep. 21, 1886. James H. McKenney, clerk.

[Endorsed:] United States Supreme Court. Henry C. Dahl, pl'ff in error, *vs.* Saly Raunheim. Writ of error. Filed Jan'y 20, 1886. I. R. Alden, clerk.

190 *Citation.*

In the Supreme Court of the United States.

HENRY C. DAHL, Plaintiff in Error,
against
SALY RAUNHEIM.

UNITED STATES OF AMERICA, *ss:*

To Saly Raunheim, the above-named defendant in error, and Stephen De Wolfe, Esqr., his attorney:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the Territory of Montana, wherein Henry C. Dahl is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice be done in the premises to the party in that behalf.

Witness Hon. Decius S. Wade, chief justice of the supreme court of the Territory of Montana, this 20th day of Jan'y, 1886.

D. S. WADE,
Chief Justice.

To the above-named Saly Raunheim and S. De Wolfe, Esqr., his attorney:

Please take notice that the above-named plaintiff in error has lodged with the clerk of the supreme court of the Territory of Montana for you a copy of the writ of error in the above case.

Respectfully, DE WITT & BACH,
Attorneys for the Plaintiff in Error.

Due service upon me of the above citation and notice the 25 day of January, 1886, is admitted and copy waived.

S. DE WOLFE,
Attorney for Saly Raunheim, Above Named.

[Endorsed:] Supreme Court U. S. 1886, Oct'r term. No. 352. Henry C. Dahl, pl'ff in error, *vs.* Sally Raunheim. Citation.

[Stamped:] Office Supreme Court U. S. Filed Sep. 21, 1886. James H. McKenney, clerk.

[Endorsed:] United States Supreme Court. Henry C. Dahl, pl'ff in error, *v.* Saly Raunheim. Citation. Filed Jan'y 27, 1886. I. R. Alden, clerk.

191 In the Supreme Court of Montana Territory.

HENRY C. DAHL, Pl'ff in Error,
vs.
SALY RAUNHEIM, Def't in Error.

I, Isaac R. Alden, clerk of the supreme court of Montana, Territory, do hereby certify that the foregoing one hundred and ninety pages, numbered from 1 to 190, inclusive, contain a full, true, and correct transcript of certain pleadings, records, and proceedings filed, made, and had in the above-entitled action in said court as the same appear on file and of record in my office.

Seal Supreme Court, Montana Territory. Witness my hand & the seal of said court this 18th day of June, A. D. 1886.

ISAAC R. ALDEN, *Clerk.*

Endorsed on cover: Montana Territory supreme court. No. 352. Henry C. Dahl, plaintiff in error, *vs.* Saly Raunheim. Filed September 21, 1886.

Office Supreme Court U. S.
FILED.
OCT 15 1889
JAMES H. McKENNEY.
CLERK.

SUPREME COURT

OF THE UNITED STATES.

October Term, 1889.

HENRY C. DAHL,
Plaintiff in Error,
vs.
SALY RAUNHEIM,
Defendant in Error.

No. 85.

HENRY C. DAHL,
Plaintiff in Error,
vs.
SALY RAUNHEIM,
Defendant in Error.

No. 86.

In Error to the Supreme Court of Montana Territory.

BRIEF OF PLAINTIFF IN ERROR.

WM. H. DE WITT,
Of Counsel for Plaintiff in Error.

INTER MOUNTAIN PRINT
BUTTE, MONTANA

SUPREME COURT

OF THE UNITED STATES.

October Term, 1889.

HENRY C. DAHL,
Plaintiff in Error,
vs. No. 85.
SALY RAUNHEIM,
Defendant in Error.

HENRY C. DAHL,
Plaintiff in Error,
vs. No. 86.
SALY RAUNHEIM,
Defendant in Error.

In Error to the Supreme Court of Montana Territory.

BRIEF OF PLAINTIFF IN ERROR.

In the two cases above entitled, the Plaintiff in Error is the same person.

In each case he bases his claim to a judgment upon his right of possession of the same quartz lode mining claim.

The proceedings in the two cases are the same, from the inception of the controversy, in the United States Land Office, to

the decision, in the Supreme Court of the Territory of Montana.

The points of law are identical; except, that, in the second case, a corporation, organized under the laws of the State of New York, is the Defendant in Error, plaintiff below; as to which fact an additional error is complained of, which will be noticed hereafter.

We will first discuss the case of Dahl, Plaintiff in Error, against Raunheim, Defendant in Error.

STATEMENT OF FACTS.

Record, p. 6. This action was tried to a jury in the District Court of Silver Bow County, Montana. It is in the nature of one to "quiet title"; but is rather a statutory proceeding, under the provisions of the following law:

"An action may be brought by any person in possession, by "himself or his tenant, against any person who claims an estate "or interest therein adverse to him, for the purpose of determin- "ing such adverse claim, estate or interest." (*Laws of Montana, Revised Statutes 1879, Code of Civil Procedure, Section 354.*)

That is to say, the above law, in connection with Section 2326, Revised Statutes U. S., in reference to the settlement of

pp. 2, 3, 4 adverse claims to mining property. (See Pleadings.)

The Plaintiff in Error, Defendent below, claims the mining ground in controversy by virtue of a location of the "BETSEY DAHL" quartz lode mining claim.

The law of the Territory provides for the location of quartz claims as follows:

"Any person or persons who shall hereafter discover any "mining claim upon any vein or lode bearing gold, silver, cinna- "bar, lead, tin, copper, or other valuable deposits, shall, within "twenty days thereafter, make, and file for record in the office "of the Recorder of the County in which said discovery is made,

"a declaratory statement, in writing, on oath, before some person "authorized by law to administer oaths, describing such claim in "the manner provided by the laws of the United States.

"That, in order to entitle any person or persons to record, "in the County Recorder's office of the proper County, any lead, "lode or ledge, there shall first be discovered on said lead, lode "or ledge a vein or crevice of quartz or ore, with at least one "well defined wall." (*Rev. Stats. Mont. 1879, 5 Div., Secs. 873-4, p. 590.*)

Plaintiff in Error made and recorded his location of the "BETSEY DAHL" claim March 9, 1881. His discovery of a valuable mineral deposit, with a well defined wall, his due location of the same, his annual expenditure, and his preservation of his possessory right, according to law and custom, are all in evidence, uncontroverted. Record, p. 33. p. 31. pp. 32, 36.

The Defendant in Error, plaintiff below, claims a possessory right to the premises as a placer mine; which right he contends was valid and existing, prior to the location of the "BETSEY DAHL." (See Complaint, Record, p. 2.) pp. 6, 7.

Plaintiff in Error made a due application, to the proper United States Land Office, for patent to his quartz claim. Defendant in Error filed his adverse claim in that office, and brought this action, under the laws above cited.

Laws Mont., R. S., Code Civ. Proc., Sec. 354.
R. S. U. S., Sec. 2326.
Pleadings.

The question for determination in the Court below was, the right of the Plaintiff in Error to proceed in the Land Office for his patent.

The verdict and judgment were against him. He moved for a new trial in the *nisi prius* court; which motion was denied. From the order denying that motion he appealed to the Supreme Court of the Territory. That Court affirmed the order of the lower Court; and, from that judgment, the Plaintiff in Error comes to this Court. pp. 69, 71, 73. p. 74. p. 75. p. 78. p. 81.

The Plaintiff in Error contended below, that the premises in controversy were not placer mining ground; and that the Defendant in error never had possession of them as such. The questions involved, and the manner in which they are raised, fully appear in the Specification of Errors, following.

SPECIFICATION OF ERRORS.

The Supreme Court of the Territory erred in not granting a new trial on the grounds urged in that Court, set forth in the Record, pp. 69, 70 and 71. Those errors, as far as we care to present them to this Court, are as follows:

I. The evidence was insufficient to justify the verdict, and the same was against the law, in the following particulars:

See Rev. Stats. Mont. 1879, Code C. P., Sec. 285; and 12th Session Legislative Assembly, p. 10, as follows:

"The former verdict or other decision may be vacated, and "a new trial granted, on application of the party aggrieved, for "any of the following causes materially affecting the substantial "rights of said party.

"Sixth:—Insufficiency of the evidence to justify the verdict, "or that it is against the law."

Record, p. 67. (a) The Court correctly instructed the jury that, if the premises be not placer mining ground, they must find for defendant below. There is no evidence proving, or tending to prove, that the ground was placer mining ground; the only evidence upon the point for Defendant in Error, was the testimony of witness Marsh, the alleged placer locator, that the premises were pp. 13, 14. returned to the U. S. Land Office as mineral ground. *Mineral* does not mean placer; mineral may be either placer or quartz. The contest is not between mineral and agricultural claimants; it

is between mineral claimants of a different character, to-wit: placer and quartz. The evidence of the simple *mineral* qualities of the ground establishes nothing for Defendant in Error; it is all that he had; there was, therefore, no evidence to support the verdict or the special findings.

(b) It appears from the evidence that, when the Defendant in Error made his alleged application to the United States for a patent to the premises as a placer mine, there was a vein of quartz known (to Plaintiff in Error, at least) to exist on the ground, which was afterwards located and claimed as the "BETSEY DAHL." Record, p. 38.

(c) There was no evidence to prove, or tending to prove, that the ground claimed by Defendant in Error as a placer mine was ever located or possessed *as such* by him, or his predecessors in interest; or that they, or either of them, ever made any discovery of valuable deposits thereon.

(d) There was no evidence to prove, or tending to prove, that the plaintiff below had possession, either actual or constructive, of the premises, at the time of the commencement of the action, June 17th, 1882; and there was nothing on which to found the special finding of the jury in this respect.

(e) In his complaint, the plaintiff below bases his possessory right upon a compliance with the laws of the United States, of Montana Territory, and all local rules and regulations of miners. There is no evidence of such compliance. p. 2.

II. Errors of law occuring at the trial, and duly excepted to by the defendant below.

See R. S. Mont., 1879, *supra*.

"Seventh: Error in Law occurring at the trial, "and excepted to by the party making the "application" (for new trial).

(a) The court erred in admitting the following testimony of Frank Marsh, and not striking the same out on motion:

"Frank Marsh, called, sworn and examined on the part of the "plaintiff, testified:

"I was a party to the location of a tract embracing the "ground claimed by the plaintiff in this action. Before the loca- "tion was made I was on the premises several times. I made out "a notice of location and posted it on the ground, claiming the "premises for myself, E. A. Nichols and S. E. Nichols, and filed "a copy with the County Recorder. I did nothing more "towards locating the premises than posting a notice on the "claim." (*Record, p. 25.*)

The foregoing evidence by the witness Marsh was the only evidence in the case on the part of plaintiff below upon the subject of the location of the ground in controversy, claimed by the plaintiff, and there was no evidence on the part of plaintiff as to any rules or regulations of miners, and the contents of the location notice were not offered or proved in evidence. This testimony in no way proved a location of the premises by the predecessor of the plaintiff below; it was allowed to go to the jury finally; it was incompetent to establish a possessory right in plaintiff below.

See B. Ex. No. 1, Record, p. 25.

(b) As a corrollary of the last specification, if the locator, Marsh, had no title, the deed from him to plaintiff below was incompetent.

See Deed, Record, p. 11; and Bill of Exceptions, Record, pp. 25-6.

(c) The Plaintiff below contended that he had applied to the U. S. Land Office for patent for his placer claim, and that Record, p. 2. Defendant below had not filed an adverse claim to said application, as required by section 2326, R. S. U. S. It therefore became necessary for him to prove said application. His only evidence on this point was as follows:

pp. 25, 26. "Saly Raunheim was then called, sworn and examined on "his own behalf, and testified:

"I am plaintiff in this action. I applied for a patent on the "premises described in the complaint, and claimed by me in this "action.

"Question by Counsel: State whether or not you ever ap- "plied for a patent for the premises claimed by you in this "action? Answer: Yes, sir; I did."

"Mr. Lee Mantle was then called by plaintiff, and testified "that the following order from the Register of the United States "Land Office, at Helena, M. T.——

"The above notice to be published for sixty days in the "Daily Inter-Mountain, a paper published daily at Butte, Silver "Bow County, Montana, at the expense of the applicant.

J. H. MOE, Register.

"This order being written below the notice on the follow- "ing page of this transcript, was received by Inter-Mountain "Publishing Company, of which he was business manager, and "the following notice of application for patent, to-wit:

"MINING APPLICATION No. 953.

"UNITED STATES LAND OFFICE,
"HELENA, M. T., July 16, 1881.

"Notice is hereby given that Saly Raunheim, whose post- "office address is Butte, Montana, has this day filed his applica- "tion for patent for fifty-nine and fifty-six hundredths acres of "placer mining ground, situated in no organized mining district, "Silver Bow County, Montana Territory, and being more partic- "ularly described by legal sub-divisions, to-wit:

"The east half of lot 6, the east half of lot 9, and the south "half of lot 8, of section number 8, township number 3 north, "range number 7 west, or the east half of the east half of the "southwest quarter, and the south half of the southeast quarter of "the northwest quarter of section 8, township 3 north, range 7 "west, of principal meridian, Montana, upon which a notice of "intention to apply for patent was posted on the 30th of June, "A. D., 1881.

"The location of this mine is of record in Book 'H,' page "115, Miscellaneous Records of Deer Lodge County. The ad- "joining claimants to these premises are the Montana Copper "Company, placer, and the Mat lode, lot number 89, claimed by "Joel W. Ransom, et al., on the west, and the placer claim of R. "S. Jones, et al., on the south.

"J. H. MOE, Register.

"BARRETT & WARREN,
"*Attorneys for Applicant.*

"July 19 se 19.

" —— by the plaintiff for the premises by him claimed " in this action, was published for sixty-one days, as in said notice " set forth." (*Record, pp. 25-6.*)

The Court erred in admitting this evidence, and not striking it out on motion. This was the only evidence on the point. The best evidence was the written application in the Land Office; this was not produced, nor oral testimony offered of its contents. The notice introduced was the published notice of the Land Office, and could only be of effect if published *after a written application* of the claimant; the latter does not appear in the testimony. (See Record, pp. 25-6-7, B. Ex.)

Record, p. 27.

(d) The Court erred in denying the motion for a non-suit, made by defendant below, on the following grounds:

First: There was no evidence that the plaintiff below, or his predecessors in interest, made a valid location of the premises, on which to base a possessory right. This error is fully specified this brief, II., (a). *Second.* It was not shown that the premises were placer mining ground, or valuable for placer purposes, or that any placer deposit was ever discovered thereon. This being the fact, plaintiff below had no placer mining possessory right on which to found his action. *Third.* It did not appear that, at the commencement of the action, or at any time, plaintiff below, or his predecessors, had possession of the premises *Fourth.* Plaintiff below did not prove any application for patent for his alleged placer mine.

Bill of Exceptions of defendant below, Record, pp. 29, 30-1.

(e) The Court erred in its charge, as follows:

p. 68.

First:—The following instruction was given:

" If the jury believe from the evidence that the grantors of " plaintiff located the premises in controversy as a placer mining " claim, according to the system of public land surveys, and that " they and, after the conveyance to plaintiff, he continued in pos- " session thereof up to the time application was made by plaintiff

"for patent, and no vein or lode at that time such as is claimed "by the defendent, was known to exist within the boundaries of "the premises, your verdict must be for the plaintiff."

It was necessary, not only that the miner *locate* the premises "as a placer mine" (as the instruction describes), but that they *be* a placer mine.

Record, p. 24, Bill Ex., and p. 68.

Second:—The Court refused the following: Record, p. 67.

"2. Possession of mining ground is either actual or con- "structive. Constructive possession arises when it is established "that there are laws, rules, or regulations in force by a compli- "ance with which a claimant is entitled to hold ground. When "such laws, rules and regulations have been proved and a claim- "ant has proved that he has complied with them he is said to "have and had constructive possession.

The plaintiff below depended upon his possession at the commencement of this action; and the above instruction was clearly the law.

Record, pp. 64-5-7.

Third:—The Court refused the following:

"4. If the jury find from the evidence that plaintiff or his "grantors never made any discovery of valuable deposit on the "ground in controversy they will find for defendant."

Also, specified this brief, paragraph II., (d) second.

Fourth:—The Court refused the following:

"6. In order to find for the plaintiff it is not sufficient for "the jury to be satisfied from the evidence that the ground in "dispute was mineral land according to the returns in the United "States Land Office, but they must find that said ground was "valuable for placer-mining ground."

Also, specified this brief, II., (d) third.

(f) The Court erred in not submitting to the jury special findings requested by defendant below, as follows:

"3. Did the plaintiff or his grantors, or any of them, ever "make a discovery of any valuable deposits on the ground claimed "by the plaintiff?

"4. Has the plaintiff or his grantors complied with any "local regulations or customs of miners in locating or holding the "ground claimed by plaintiff?

"6. At the commencement of this action had the defendant "actual possession of the BETSEY DAHL quartz lode mining "claim?

These findings carry out the theory of defendant below, as fully expressed in the specifications foregoing. If they had been submitted to the jury, and found in accordance with the evidence, the defendant below would have had a decree, the general verdict notwithstanding.

ARGUMENT.

We desire to discuss the case in the order of events upon the trial, rather than the order in which the points appear in the specifications, referring, however, to the specifications, to indicate how the point is saved.

We present the following suggestions for the consideration of the Court.

I. The plaintiff below relied, for the inception of his pos
Record, p. 2. sessory right to the premises, upon an alleged location of the ground by E. A. Nichols, et al., on February 22, 1880. That location is denied in the answer; plaintiff below must prove it.
p. 11. Nichols, et al., transferred their claim to plaintiff below June 27,
p. 33. 1881. The quartz location of defendant below was March 9, 1881. *When* did the placer claimants locate? The record is
p. 6. silent. Marsh, the only witness who testifies as to location, does not fix day, month or year. No notice of location was in evidence. The first date that we have fixed in the title of plaintiff

below is, the date of the deed from the locators to him, June 27, 1881. On that day defendant below had had a subsisting title since the preceding March. It cannot be presumed that the placer location was prior to the quartz claim; that fact is affirmatively alleged, it must be in the same manner proved; it was not proved. Plaintiff below had no standing before the Court. Record, p. 11.

The motion to strike out the testimony of Marsh should have been granted.

Specifications, II, (a).

The motion for a non-suit should have been granted. p. 49.

Error specified herein, Paragraph II, of Specifications (a), and (d) first.

For the same reason the verdict was contrary to the evidence.

Error specified, Paragraph I, (c) and (e), of Specifications.

II. In an action of this nature, the plaintiff must be in possession of the premises at the time of the commencement of the action.

Sec. 354, Code C. P., cited *supra*.
Lyle v. Rollins, 25 Cal., 437.
Rico v. Spence, 21 *id.*, 504.
Ferris v. Irving, 28 *id.*, 645.
Pralus v. Jefferson M'g. Co., 34 *id.*, 558.
Wolverton v. Nichols, 5 Mont., 89; and same case in 119 U. S., 485, on appeal from Supreme Court of Montana.

In the last case cited there was before this Court the same statute which we cite above, Sec. 354, Code C. P. This Court there say, that the construction given by the Supreme Court of Montana is entirely too restricted, and hold that the plaintiff below in that case, had shown a sufficient possession to entitle her to institute the action. Our contention here is, that there must be *some*

sort of possession shown, and that possession may be *possessio pedis*, actual possession; or it may be a constructive possession.

Cases last cited; and
Sepulveda v. Sepulveda, 39 Cal., 13.

In the case at bar, the plaintiff below makes no pretense to actual possession; whatever there was of such possession was in defendant below, as he testifies that he was actually living on the premises. The real question is, did the plaintiff below have constructive possession, as defined by all the decisions upon mining cases of this nature. Constructive possession of mining claims is well defined in Pralus v. Jefferson M'g Co., *supra*, (an action upon a statute similar to the one upon which the case at bar is founded), as follows:

Record, p. 38.

"Constructive possession (of mining claims) can only be "established by the proof of three facts: *First*, that there were "local mining customs, rules and regulations in force in that par- "ticular district. *Second*, What particular acts were required by "such mining laws or customs to be performed in the location "and working of claims, and the extent of these claims as author- "ized by such laws. *Third*, That plaintiff had, substantially, "complied with these requirements."

See also Moxon v. Wilkinson, 2 Mont., 421.

Plaintiff below made no proof of any customs, rules or regulations, nor of any compliance with the same, or with the laws of the United States or the Territory. He did not prove any placer mining work, or even any "prospecting," in the language of the miners.

The verdict was, therefore, contrary to the evidence, and the Court erred.

Specifications, Paragraphs I., (c), (d), (e); and II., (d) third, (e) second.

III. As a corollary of the last paragraph, we contend that the plaintiff must prove, not only a *possession* constructively, but

one consistent with his claim; that is, in this case, it must be a placer mining possession.

Moxon v. Wilkinson, *supra.*
Atwood v. Fricot, 17 Cal., 38.
Correa v. Frietas, 42 *id.*, 339.

The United States laws provide the procedure for obtaining a patent from the government, when the possessory right of the applicant is proved; in this sort of case, the *placer mining* possessory right.

We challenge the record to produce a syllable of testimony of such possession. The locator, Marsh, says he posted a notice, and recorded it. He did not exhibit it in evidence; in any event, the act had no legal significance. He took no possession, placer in character, or otherwise. We do not hear of another act by the alleged locator, or his successor, the plaintiff below, until the deed of June 27, 1881, and, on that day, the defendant below had had a valid possessory right for three months, since March 9, 1881. Record, p. 7. p. 11. p. 33.

The verdict, therefore, was contrary to the evidence, and the Court erred.

Specifications, I., (c); II., (a), (d) first, (e) second.

IV. If we are correct in paragraphs II. and III. of this argument: if it be the law that plaintiff must have possession at commencement of the action: if it be the law that such possession must be for placer mining purposes, then the logical sequence is, that the premises must be shown to be placer mining ground; for otherwise, a claimant might hold, and obtain a patent for, a ranch, a townsite or a lode claim under the placer law, or *vice versa.*

Placer mining ground is, in law and in fact, that which is available and valuable for placer mining purposes.

Alford v. Barnum, 45 Cal., 482.
Ah Lew v. Choate, 24 *id.*, 562.
U. S. v. Iron Silver M'g. Co., 128 U. S., 673.

Such is the rule between mineral and agricultural claimants.

Colorado C. & I. Co. v. U. S., 123 U. S., 307.

The same rule is good as between two distinct classes of mineral claimants; that is, placer and lode. The ground in controversy is not placer. Witness Marsh, locator, says that his only knowledge of the ground was, that it was returned to the United States as *mineral;* which may mean either placer or quartz. Witness Raunheim makes the bare statement that it is placer. On cross-examination he has no knowledge of the character of the ground. The whole testimony is uniform that the premises are absolutely worthless for placer purposes.

Record, p. 13.

The verdict was, therefore, contrary to the evidence, and the Court erred.

Specifications I, (a), (c); II, (d) second, (e) fourth.

V. The plaintiff proved no discovery of valuable deposits by the locators, or by any one, prior to the quartz location by defendant below.

"*Discovery* and location are the sources of title to mining claims." (*O'Reilly* v. *Campbell, 116 U. S. 418.*)

Specifications I, (c); II, (d) second, (e) third.

VI. Before the alleged application for a placer patent by plaintiff below, July 16, 1881, "a vein or lode was known to exist within the boundaries of said placer claim;" which lode was located by the defendant below, and is the lode now in controversy, and which plaintiff below can not now claim, as he did not include it in his placer application. It was "known to exist" to defendant below, and to others, and it is not material if it was unknown to the placer applicant.

Noyes v. Mantle, 127 U. S., 348.

Reynolds v. Iron Silver M'g. Co., 116 U. S., 687.
Iron Silver M'g. Co. v. Reynolds, 124 U. S., 374.

The verdict was contrary to the evidence in this respect.

Specification I, (b).

The case of Henry C. Dahl, plaintiff in error, against the Montana Copper Company, defendant in error, we submit on the foregoing argument with suggestions as follows:

I. In this case, the placer location notice by the predecessor of the plaintiff below was offered in evidence, and the Court erred in admitting the same; to which defendant below excepted. The notice was not required by law, and was of no effect. Record, p. 14. p. 15

Moxon v. Wilkinson, 2 Mont., 421.

II. The plaintiff below undertook to prove some labor done upon the ground, but it was not for placer mining purposes, but rather for smelting and digging wells. p. 21. p. 24

III. Herein the plaintiff below also failed in its proof of application for United States patent for its placer claim. The evidence was by an *ex parte* affidavit, of F. Adkinson, Register of the Land Office, and the testimony of Stephen DeWolfe, attorney for plaintiff below, that he had made the application and had seen the papers. The absence of the original was not excused, the deposition of the register was not taken, or certified copies introduced; in fact, the *application* did not appear at all, only a copy of the "notice" alleged to have been published. To this attempt to prove the records, defendant below objected, and filed his exceptions. He now assigns that action of the Court as error. p. 18. p. 20

Bills Ex., Record, pp. 18, 19 and 20.

IV. Another error, which appears only in this case, and which the plaintiff particularly urges, is this:

The plaintiff alleges in its complaint, that it is a foreign corporation, organized under the laws of the State of New York. This fact was uncontroverted. At the time this action was commenced, and the trial had, there was in force the Act of the Extraordinary Session of the Eleventh Legislative Assembly, page 8, approved July 22, 1879; which law, as far as it applies to this case is as follows:

Record, p. 2.

"Section 1. That all foreign corporations, or joint stock "companies, organized under the laws of any state or territory "of the United States, or by virtue of any special act or acts of "the legislative assembly of any such state or territory, or of any "foreign government, shall, before doing business of any kind, "nature or description whatever within this territory, file in the "office of the secretary of the territory, and in the office of the "county recorder of the county wherein they intend to carry on "or transact business, a duly authenticated copy of their charter "or certificate of incorporation, and also a statement, to be verified "by the oath of the president and secretary of such incorporation, "and attested by a majority of the board of directors, showing:

"First. The name of such incorporation, and the location of "its principal office or place of business, without this territory; "and, if it is to have any place of business or principal office "within this territory, the location thereof.

"Second. The amount of its capital stock.

"Third. The amount of its capital stock actually paid in "money.

"Fourth. The amount of its capital stock paid in any other "way, and in what.

"Fifth. The amount of the assets of the incorporation, and "of what (the) assets consist, with the actual cash value thereof.

"Sixth. The liabilities of such incorporation, and, if any of "its indebtedness is secured, how secured, and upon what "property.

"Such incorporation or joint stock company, shall also file "at the same time, and in the same offices, a certificate, under the "seal of the corporation, and the signature of its president, vice-"president, or other acting head, and its secretary, if there be one, "certifying that the said corporation has consented to be sued in

"the courts of this territory, upon all causes of action arising "against it in this territory, and that service or process may be "made upon some person, a citizen of this territory, whose name "and place of residence shall be designated in such certificate, "and that process, when so served upon such agent, shall be "taken, deemed and held to be as valid to all intents and purposes "as if served upon the company in the state or territory under "the laws of which it is organized.

"Sec. 2. The written consent of the person so designated "to act as such agent shall also be filed in like manner, and such "designation shall remain in force until the filing, in the same "offices, of a written revocation thereof, or of the consent, exe- "cuted in like manner. The person designated may, from time "to time, change his place of residence or office to some other "place within the territory by a writing executed by him, and filed "in like manner. An exemplified copy of a designation, so filed, "accompanied with a certificate that it has not been revoked, is "presumptive evidence of the execution thereof, and conclusive "evidence of the authority of the officer executing it.

"Sec. 3. All foreign incorporations now doing business "within this territory, shall, within four months from and after "the publication of this act in the newspaper having the contract "to do the public printing in this territory, file in the office of the "secretary, and in the office of the county recorder of the county "wherein they are respectively doing business, the statement and "certificate required to be filed by the first section of this act. If "any such corporation shall fail, for more than four months from "the said publication hereof, so to file said statements and certifi- "cates, or any or either thereof, or if any foreign incorporation "shall, hereafter, attempt or commence to do business in this ter- "ritory without having first filed said statements and certificates "required by this act, (it) shall forfeit to the people of Montana "the sum of ten dollars for every day it shall so neglect to file the "the same, and all acts and contracts made by such incorporation "or any agent or agents thereof, during the time it shall so fail "and neglect to file said statements and certificates, shall be void "and invalid as to such incorporation. It shall be the duty of the "district attorney of the county in which the business of such "corporation shall be located to sue for and recover in the name "of the people of the territory, the penalty above provided, and "the same, when so recovered, shall be paid into the treasurer of "such county for the use of the common schools therein."

That law required every foreign corporation to file four distinct papers:

1. A certified copy of its charter or certificate of incorporation.

2. A statement of its affairs, showing certain facts.

3. A designation of a local agent upon whom service of process of the territorial courts could be made.

4. The consent of such agent to act.

The evidence showed that they had filed the first of the papers, and neglected the second, third and fourth. The law provides, that, on failure to file "either of the above," such corporation shall suffer two penalties:

1. A forfeit of ten dollars a day to the territory.

2. All acts of such corporation shall be void and invalid *as to such corporation.*

We contend, therefore, that, when plaintiff below, the corporation, filed its complaint, appeared in Court, and sought the aid of the Court to maintain its alleged rights, its whole proceeding was void. We, therefore specify as error:

First. The motion for a non-suit should have been granted, as the complaint did not show facts sufficient to constitute a cause of action; and the complaint could not support a judgment.

See Record, pp. 24, 25, Motion for Non-suit and Bill of Exceptions.

Second. The Court erred in refusing to give the following instruction:

In order to find for the plaintiffs the jury must find from the evidence that before commencing this action the plaintiffs, as a foreign corporation, had, before the commencement of this action, filed in the office of the secretary of Montana and in the office of the county recorder of the county wherein they were doing business at the commencement of this action a duly authenticated copy of their charter or certificate of incorporation, and also a statement verified by the oath of the president and secretary of said plaintiffs and attested by a majority of their board of directors, showing—

First. The name of such incorporation, the plaintiffs herein, and the location of its principal office or place of business without this territory, and if it have a place of business or principal office within this territory, the location thereof.

Second. The amount of its capital stock.

Third. The amount of its capital stock paid in money.

Fourth. The amount of its capital stock paid in any other way, and in what.

Fifth. The amount of the assets of the incorporation and of what the assets consist, with the actual cash value thereof.

Sixth. The liabilities of such incorporation, and if any of its indebtedness is secured, how and upon what property.

And also, in the same offices, a certificate under the seal of the corporation, the plaintiffs herein, and the signature of its president, vice-president, or other acting head, and its secretary, if there be one, certifying that said corporation, plaintiff herein, has consented to be sued in the courts of this territory upon all causes of action arising against it in this territory, and that service of process may be made upon some person a citizen of this territory, with his name and place of residence designated in said certificate, and that process when so served upon such agent shall be taken, deemed, and held to be as valid to all intents and purposes as if served upon the company in the state or territory under the laws of which it is organized, and also the written consent of the person designated as aforesaid, in the same offices; and if it do not appear from the evidence that the plaintiffs had filed the papers above described and each of them in the offices above mentioned, the jury must find for the defendant.

See Record, Bill of Exceptions, pp. 39, 40, 34-5.

A corporation can exist only within the sovereignty which created it, except through comity.

Bank of Augusta v. Earle, 13 Peters, 519;
Paul v. Virginia, 8 Wall., 181.

Montana has a right to declare under what conditions foreign corporations may exist within her territory; and one not complying with those conditions has no legal existence.

Cases last cited; and
Laws Legisl. Assembly, *supra*.
Morse v. Ins. Co., 30 Wisc., 496.
In Re Comstock, 3 Sawy., 221.

Such a law is not unconstitutional. A corporation is not a citizen, under Art. IV, Sec. 2, Constitution of the United States.

Ducat v. Chicago, 10 Wall., 410.
Paul v. Virginia, *supra*.

The act of the legislative assembly of Montana is prohibitory. The plaintiff below had no power to transact any business; in other words, was not created, had no entity, was not a "party," until it had complied with the law.

Cases *supra;* and
Ætna Ins. Co. v. Harvey, 11 Wis., 412.
Jones v. Smith, 2 Gray, 501.
St. Clair v. Cox, 106 U. S., 356.
Atlantic Ins. Co. v. Fitzpatrick, 2 Gray, 279.

The case of King v. National Mining and Exploring Company, 4 Mont., p. 1., is not in point. That case was decided under the codified statutes of Montana, Seventh Session, 1871–2, p. 419, Sec. 46 and 47, which read as follows:

"Section 46. That, hereafter, all mining, manufacturing "and other companies or incorporations incorporated by the leg- "islature of any state or territory of the United States, or incorpor- "ated under the general laws of incorporation of any state or ter- "ritory other than this territory, and incorporated for the purpose "of carrying on, or doing business of any kind, nature, and de- "scription whatever, in this territory, shall, before they proceed "to do business under the charter or certificate of incorporation in "this territory, file for record, with the secretary of the territory, "and also in the office of the recorder of the county in which they "are carrying on business, the charter or certificate of incorpora- "tion of said company or corporation, duly authenticated, or of "the copy of said charter or certificate of incorporation; and the "certificate of the president and secretary of said company or "corporation, verified under oath by either of the said officers, "or the superintendent or managing agent thereof, that the copy "of said charter or certificate of incorporation is a true and correct "copy of the original charter or certificate of incorporation, granted "to the person therein named, or their successors, and the charter "or certificate of incorporation was granted at the time and place "therein mentioned and under the law of the state or territory "designated; and said foreign incorporation shall remunerate the

"secretary and recorder for the recording of the same, and said "charter, so recorded, shall be recognized in the courts of this ter- "ritory as their foreign act of incorporation.

"Sec. 47. That any company or corporation, incorporated "as in Section 1 of this act, that shall neglect or refuse, for the "period of thirty days, to file for record their charter or certificate "of incorporation, or copy thereof, with the secretary of the ter- "ritory and county recorder of the county wherein such business "may be carried on, shall be deemed guilty of willful negligence "on the part of said company or corporation, and thereafter any "person or persons, maintaining or prosecuting any civil action in "any Court of this territory against said company or corporation "so neglecting or refusing to file for record their charter or cer- "tificate of incorporation, or copy thereof, with the secretary of "the territory and county recorder as heretofore provided, shall "not be held to prove on file the incorporation of said company "or corporation by the original charter or certificate of incorpor- "ation or act of incorporation, but the same may prove by gen- "eral reputation."

That law was repealed by Act approved July 22, 1879, Sec. 5, p. 10, Laws of Extra. Session, Eleventh Legislative Assembly, as follows:

"Section 5. That Sections 46 and 47, of Chapter XVIII, "of an Act entitled, An Act Revising, Re-enacting and Codify- "ing the General and Permanent Laws of Montana Territory, ap- "proved January 12, 1872, and all acts and parts of acts in conflict "herewith be, and the same are hereby, repealed."

The case at bar falls under the provisions of the law of 1879, and not that of 1872, which latter was repealed before this controversy arose. In the case in 4 Mont., the line of reasoning is, that there was *one penalty* to be visited upon a foreign corporation failing to comply with the law; that is, being guilty of willful negligence and relieving an adverse party from proving its corporate existence. We cordially assent to the law in King v. National Mining and Exploring Co., and willingly apply its reasons to this case. In the law of 1879, two penalties are provided; we ask that one of them be enforced, to-wit: That the acts of the defaulting corporation be declared void, as the law says they shall be.